

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

EXECUTIVE COMMITTEE

H. C. BARLOW, CHAIRMAN.
TRAFFIC DIRECTOR, THE CHICAGO ASSOCI-
ATION OF COMMERCE, CHICAGO, ILL.

F. B. MONTGOMERY, VICE-CHAIRMAN.
MGR. TRAFFIC DEPT., INTERNATIONAL HAR-
VESTER CO., CHICAGO, ILL.

J. M. BELLEVILLE,
G. F. A. PITTSBURGH PLATE GLASS CO.
PITTSBURGH, PA.

F. T. BENTLEY,
TRAFFIC MGR., ILLINOIS STEEL CO.,
CHICAGO, ILL.

G. M. FREER,
MGR., TRAFFIC DEPARTMENT, CHAMBER OF
COMMERCE, CINCINNATI, OHIO.

P. M. HANSON
TRAFFIC MGR., NATIONAL ENAMELING AND
STAMPING CO., GRANITE CITY, ILL.

D. F. HURD,
TRAFFIC COMMR., CHAMBER OF COMMERCE,
CLEVELAND, OHIO

C. A. JENNINGS,
MGR., TRANSP. DEPT., THE AMERICAN COT-
TON OIL CO., CHICAGO, ILL.

H. G. KRAKE,
MGR., TRAFFIC BUREAU, COMMERCE CLUB,
ST. JOSEPH, MO.

J. C. LINCOLN
MGR., TRAFFIC BUREAU, THE MERCHANTS
ASSN., NEW YORK, N. Y.

H. F. LINDSAY,
TRAFFIC MGR. LINDSAY BROS., MILWAUKEE,
WIS.

A. W. MCCLAREN,
MANAGER TRANSP. DEPT., MORRIS & CO.,
CHICAGO, ILL.

E. J. MCVANN,
MGR. TRAFFIC BUREAU, COMMERCIAL CLUB
OMAHA, NEB.

J. CHAS. MADDISON,
TRAFFIC MGR., MONTGOMERY WARD & CO.,
CHICAGO, ILL.

ARTHUR T. WATERFALL,
TRAFFIC COMMR., BOARD OF COMMERCE,
DETROIT, MICH.

OFFICERS EX-OFFICIO

STANDING COMMITTEES

ORGANIZATION

P. M. HANSON, CHAIRMAN
TRAFFIC MGR., NATIONAL ENAMELING AND
STAMPING CO., GRANITE CITY, ILL.

MEMBERSHIP

W. E. CULLEN, CHAIRMAN
TRAFFIC DIRECTOR, TRAFFIC BUREAU, CENT-
RAL MFG. DISTRICT, CHICAGO, ILL.

FINANCE AND AUDITING

C. A. JENNINGS, CHAIRMAN
MGR., TRANSP. DEPT., THE AMERICAN COT-
TON OIL CO., CHICAGO, ILL.

LEGISLATIVE

E. J. MCVANN, CHAIRMAN
MGR., TRAFFIC BUREAU, COMMERCIAL CLUB,
OMAHA, NEBR.

CAR DEMURRAGE AND STORAGE

J. C. LINCOLN, CHAIRMAN
MGR., TRAFFIC BUREAU, THE MERCHANTS
ASSN., NEW YORK, N. Y.

TRANSPORTATION INSTRUMENTALITIES

J. S. MARVIN, CHAIRMAN
GENERAL TRAFFIC MGR., NAT'L AUTOMOBILE
CHAMBER OF COMMERCE, INC., NEW YORK,
N. Y.

RATE CONSTRUCTION

H. G. KRAKE, CHAIRMAN
MGR., TRAFFIC BUREAU, COMMERCE CLUB,
ST. JOSEPH, MO.

TARIFFS

M. F. DOYLE, CHAIRMAN
TRAFFIC MANAGER, CLEVELAND GRAIN CO.,
CLEVELAND, OHIO.

CLASSIFICATION

G. M. FREER, CHAIRMAN
MGR., TRAFFIC DEPT., CHAMBER OF COM-
MERCE, CINCINNATI, OHIO.

FREIGHT CLAIMS

J. M. BELLEVILLE, CHAIRMAN
G. F. A. PITTSBURGH PLATE GLASS CO.
PITTSBURGH, PA.

BILL OF LADING

W. M. HOPKINS, CHAIRMAN
831-72 W. ADAMS ST., CHICAGO, ILL.

BAGGAGE

S. W. CAMPBELL, CHAIRMAN
SEC'Y-TREAS., NATIONAL SHOE WHOLESALERS
ASSN. OF U. S., CHICAGO, ILL.

WEIGHING

O. F. BELL, CHAIRMAN
TRAFFIC MGR., CRANE CO., CHICAGO, ILL.

PROCEEDINGS

of

SUMMER MEETING

of

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

held at

HOTEL SECOR, TOLEDO, OHIO

September 9th and 10th,

1915

(Twenty-first meeting of the League.)

INDEX

	Page		Page
Report of Executive Committee		Report of Tariff Committee (Continued)	
League Office at Washington, D. C.	1- 2	Disposition of Fractions in the Estab-	
Railway Mail Pay.	2	lishment of Freight Rates.	10
Shipper's Load and Count Shipments. .	2	Report of Bill of Lading Committee.	10-12
Report of Legislative Committee		Export Form of Bill of Lading.	12
Codification of Interstate Commerce		Report of Committee on Car Demurrage and	
Law as to Mutual Rights and Duties		Storage	
of Shippers and Carriers.	2- 3	Uniform Code of Track Storage Rules. .	12-13
Reorganization of the Interstate Com-		Draft for Uniform Track Storage Rules.	13-14
merce Commission.	3	Demurrage on Private Cars.	14
Right of Appeal from Negative Orders		Demurrage Rule 1—Section C—Private	
of the Interstate Commerce Commis-		Cars	15
sion	3- 4	Report of Freight Claims Committee	
Amending the Law or Rules of Practice		Unnecessary Tracing of Freight.	15-16
of the Interstate Commerce Commis-		Incomplete Expense Bills.	16
sion to Give Litigants the Right to		Handling of Freight—Packing, Mark-	
Review Findings of Examiners and		ing, Etc. (Manual of Instructions for	
File Exceptions and Objections to		Shipping Clerks)	16-17
Same, Prior to Decision by the Com-		Handling of Freight—Packing, Mark-	
mission	4- 5	ing, Etc. (One-in-Ten Marking Rule)	17
Report of Special Committee on Stop-Over		Liability of Carriers When Marks on	
in Transit to Complete Loading or Partly		Packages Do Not Agree With Ship-	
Unload	5- 6	ping Tickets.	17-18
Supplemental Report of the Committee		Double Collection of Charges on Pre-	
on Stop-Over in Transit.	6	paid Shipments.	18-19
Report of Legislative Committee (Continued)		Return of Freight Bills to Claimants	
Amending the Law to Provide One		After Adjustment of Claims.	19-20
Period of Time for Beginning All		Ludowici-Celadon Case Involving Re-	
Actions Relating to Transportation		fund of Overcharges Without Origi-	
Charges	6	nal Paid Freight Bill.	20-21
Legislation as to Uniform Classification	6- 7	Relations with National Association of	
Bill of Lading Legislation.	7	Railway Commissioners	21
Amendment of Cummins Law.	7	Report of the Committee on Transportation	
Distinction Between Cases of Repara-		Instrumentalities	
tion Resting Upon the Unreasonable-		Free Interchange of Cars.	21
ness of Rates Challenged vs. Those		Master Car Builders' Rules Requiring	
Resting on Discrimination.	7	Protection of Car Doors.	21-22
Amending Fourth Section of Commerce		Report of Advisory Committee.	22
Act So That Through Rates Shall		Report of Weighing Committee.	22-23
Not Exceed Combination of Locals,		Resolution of Thanks.	23-24
Even Though One Factor is an Un-		Address by Mr. Frank L. Mulholland.	24-25
challenged State Rate.	7- 8	Address on "The New Jurisprudence," by	
Report of Tariff Committee		Mr. Francis B. James.	26-28
Consolidation of Individual Tariffs in		Address by Hon. Edgar E. Clark.	29-35
Official Classification Territory in			
Association Issues.	8-10		
Reception to Commissioner Clark.	10		

385
N213P
1915

UNIVERSITY OF ILLINOIS LIBRARY
JUN 18 1917

Proceedings of Meeting

THURSDAY, SEPTEMBER 9, 1915

Morning Session

The meeting was called to order at 10:15 A. M., Mr. H. G. Wilson, President, presiding.

The president made announcement of arrangements made for entertainment of visiting ladies and gentlemen and appointed as a committee to meet Hon. Edgar E. Clark, Commissioner, Interstate Commerce Commission, who was to be the guest of the League at the dinner in the evening, Messrs. Mark Menell and F. B. Montgomery.

The League then proceeded to take up the regular docket of subjects assigned for consideration at the meeting.

REPORT OF EXECUTIVE COMMITTEE

League Office at Washington, D. C.

300
1915
The president called attention to the action taken at the Memphis meeting referring to the Executive Committee for investigation and report, the question of establishing a permanent office of the League at Washington, D. C., such report to contain a recommendation and statement of cost. On behalf of the Executive Committee he reported that a special committee had been appointed to investigate this subject and report. Attention was called to the circular issued to the membership by this special committee requesting an expression of opinion on this question by the individual members. The president stated that he had been directed by the Executive Committee to state that from the information received from the membership in response to this circular, there seemed to be a very decided opinion among those who did respond that there should be an office of the League in Washington, but that inasmuch as the replies received in opposition to this action contained some very well founded objections, and further because the responses do not represent anything like a majority of the membership of the League, the Executive Committee, after giving the matter very careful consideration, had decided that it was not prepared at this time to make any definite recommendation. The committee had decided, however, to inform the League that in its opinion action of this kind would necessitate consideration of certain necessary changes in the constitution of the organization, and that there would be one class of changes necessary if it was decided only to open an office of the League in Washington, while other and more important changes would have to be made if it should be decided to move

the present headquarters at Chicago to Washington. The committee therefore at this time simply referred the matter to the meeting of the League for discussion in order that the committee might have the benefit of a further expression of opinion by the members present. Without any formal motion the subject was therefore placed before the membership for discussion.

Quite a number of the members took part in this discussion, and those in favor of the suggestion presented the view that sooner or later all of the matters which the League is interested in terminate in Washington; that a League office established there could be of service to individual members in furnishing them information upon various matters as requested, for example, information as to tariffs filed, as to suspension orders issued by the Commission, as to rates which may have been in effect at any time in connection with claims for undercharges, that the League would in a general way be more closely in touch with the work of the Interstate Commerce Commission, the committees of Congress, etc. It was the view of those expressing favorable opinions that such a move need not necessarily savor of politics.

On the other side the view was expressed that it appeared this action would be a direct departure from the principle on which the League was founded, namely, friendly conference and going to Washington only when efforts along the line of conference had failed. That it appeared impossible from the standpoint of expense to maintain two offices, and that action to establish an office at Washington necessarily involved closing the Chicago office. That there was no member of the League in Washington, and few important railroad officials there, while on the other hand Chicago was more nearly a central location as representing the entire membership of the League, and that this was also the headquarters of executive officials of the Western lines, as well as of important officials of Eastern and Southern lines. That it is necessary to have the League headquarters at a location which will be central so far as the selection of the Executive Committee is concerned, in order that a quorum may be secured for its meetings, and that Chicago was more central and convenient for this purpose than Washington. It was also suggested that in most of the matters concerning which a Washington office might be called upon for information, individual members might be on opposite sides and that there would therefore be considerable diffi-

culty experienced by the representative of the League at Washington in handling matters of this nature in an impartial manner, and that there were now numerous agencies at Washington through which such information can be secured.

Upon motion, made and carried, it was voted to grant the Executive Committee further time with instructions to bring in a report and recommendation at the annual meeting, and it was so ordered.

Railway Mail Pay

The Executive Committee reported that it had appointed a special committee consisting of Messrs. E. J. McVann, F. T. Bentley and Herbert Sheridan to bring in a resolution as to Railway Mail Pay for the consideration of the League. This committee reported the following resolution, which upon motion, made and carried, was unanimously adopted:

Whereas, There is a controversy existing between the common carriers of our country and the Post Office Department over the compensation due said carriers for transporting the mails; and

Whereas, In various rate advance cases the carriers have insisted that their total net income is insufficient, and their claim has been an important factor in such cases; and

Whereas, If the carriers' compensation for transporting the mails be not adequate, the burden necessarily falls upon the shipping public to make up the deficiency through higher freight and passenger rates; and

Whereas, The honor and dignity of our government demand that said controversy be brought to a speedy conclusion, therefore be it

Resolved, That it is the sense of the National Industrial Traffic League that the fact should be speedily ascertained as to whether our common carriers are receiving adequate compensation; and be it further

Resolved, That our president be instructed to memorialize the proper committees of the Senate and House of Representatives, suggesting that the Interstate Commerce Commission is the proper body to assist in ascertaining the facts, and that it be directed to investigate the entire question and report as speedily as possible its findings and recommendations for the guidance of Congress in bringing said controversy to a prompt and proper conclusion.

Shipper's Load and Count Shipments

On behalf of the Executive Committee the Assistant Secretary reported as to the result of correspondence with the Commission in regard to its decision in case No. 6130, Louisiana State Rice Milling Co. vs. Morgan's Louisiana and Texas Railroad and Steamship Co., et. al., calling attention to the reference therein to the statement made by the carriers that claims are declined **when investigation shows delivery with seals intact**, and stating that it was assumed that the Commission, in referring to this position of the carriers, did not thereby give its approval thereto.

The Commission has replied stating that we are correct in assuming that the mere recital in the opinion of the attitude of the carriers on this point does not carry with it the Commission's approval of this position, except to the extent that the rule or practice, as to shipper's load and count provision, has not in its general aspects been found to be unreasonable. It is the view of the Commission that the shipper's load and count provision simply operates to place the burden of proof upon the shipper that the amount specified was loaded in the car and that a less amount was taken from the car by the consignee, which the Commission does not find to be an improper placing of the burden of proof. The Commission further refers to the fact that it has no jurisdiction over loss and damage claims, which, in the event of contest, must be passed upon by courts.

The Executive Committee reported this matter to the members of the League for their information and guidance in similar cases where the question of condition of seals arises.

REPORT OF LEGISLATIVE COMMITTEE

Codification of Interstate Commerce Law as to Mutual Rights and Duties of Shippers and Carriers

(In connection with the report of the Legislative Committee, the attention of the members is directed to the address subsequently delivered to the members of the League by Commissioner Clark at the dinner on Thursday evening, printed herein at the conclusion of the regular proceedings.)

In presenting this matter the Chairman of the Legislative Committee suggested that Mr. Francis B. James, Chairman of the Commercial Law Committee of the American Bar Association, who was present at the meeting, be requested to inform the membership as to what the American Bar Association has done and what the status is with regard to the codification of interstate commerce law.

Mr. James briefly referred to the manner in which the reciprocal rights, duties and obligations of shippers and carriers has grown up under various state decisions, with the various states differing with each other as to the interpretation and application of these rights and duties, and that while the federal courts have also from time to time passed upon these questions in numerous cases, there is a very unsatisfactory condition existing. He pointed out that if the law were codified in respect to the reciprocal rights, duties and obligations of shippers and common carriers in interstate and foreign commerce that the way would then be absolutely clear for the adoption of a clean bill of lading free from the numerous conditions now printed on the back thereof.

The members were advised that it was the program of the American Bar Association through its Committee on Commercial Law to secure the creation of a commission by Congress for the purpose of bringing about this codification of interstate commerce law.

Upon motion, made and carried, the League placed itself on record as endorsing and supporting the program of the Commercial Law Committee of the American Bar Association with reference to the codification of interstate commerce law.

Reorganization of the Interstate Commerce Commission

The Chairman of the Legislative Committee reported that it was understood that a bill would probably be introduced in the next session of Congress providing for the reorganization of the Commission by the addition of two members and providing for a method of the Commission dividing itself into divisions. It was pointed out that the object of this legislation was to furnish some relief to the Commission in its work, it being generally recognized that under the present plan of organization the service of the public suffers by reason of the overcrowded condition of the work assigned to the Commission and some legislation is deemed necessary to relieve this situation.

Upon motion, made and carried, the subject was referred back to the Legislative Committee for further investigation and definite report to the next meeting of the League.

Right of Appeal from Negative Orders of the Interstate Commerce Commission

The Chairman of the Legislative Committee reported that both the Legislative and Executive Committees had given this matter consideration

but had no definite recommendation to make at this time. He further invited the attention of the membership to the application made, on behalf of certain Pacific Coast cities, to the Federal Court for the Northern District of California (eastern division), for an injunction preventing the Interstate Commerce Commission from making effective its so-called back-haul decision, in which decision the Commission limited the application of the trans-continental terminal rates to ports on the Pacific Coast which are reached by steamship lines. Attention was invited to the twelve propositions presented by counsel for the Commission in opposition to the granting of this application for an injunction, and the members were advised to study the points raised by counsel as bearing upon shippers' right of appeal. For the ready reference of the members of the League these propositions are printed herewith:

1. No more equitable adjustment of the trans-continental rate problem can be devised than that arranged by the Commission whereby the petitioning cities are not named as terminal points.

2. Even though the court might think some other arrangement would be better, it cannot substitute its judgment for that of the Commission, a body created by law to deal with rate-making questions.

3. The court has no jurisdiction to make an order concerning rates nor to direct the Commission to make an order. It cannot, by injunction or otherwise, change a rate, make a rate or alter an order made by the Commission.

4. Petitioners are attempting to bring the rate-making controversy before the court as an original proposition. The court has no more jurisdiction than it would have of a question to determine the reasonableness of rates or discrimination in rates between cities and localities in the first instance.

5. Section 4 refers exclusively to carriers and deals with a rate-making problem only. There is no provision in section 4 for trying out controversies and determining possible discriminations in rates between cities and localities. Resort by petitioners to the Commission under section 13, and an order entered after full investigation by the Commission are prerequisite to jurisdiction of this court in matters of this kind.

6. The court has no power to suspend rates filed in compliance with the Commission's orders and already in effect.

7. Failure to include certain localities does not abrogate the rights of localities named in the order. They have their remedy under section 13 of the act.

8. The court has power to pass upon the validity of the orders that were made, but has no jurisdiction as to the legality of orders which the Commission might have made, but which it did not make.

9. The court may not properly consider evidence not presented to the Commission.

10. Competition to a more distant point justifies, under the fourth section, a lesser charge than to a nearer non-competitive point, and the lesser charge to the more distant competitive point is not a discrimination against the nearer non-competitive point to which a greater rate applies.

11. Confiscation cannot be predicated on increased rates if such increased rates are reasonable.

12. The changed conditions, other than the elimination of water competition referred to in section 4 have no reference to inland points, such as petitioners, that obtained terminal rates through artificial conditions created by the absorption of inland locals by the ocean carriers. Furthermore, this has no application to the case at bar, because it applies only to rates reduced after the passage of the act, and terminal rates were given to petitioners long before the passage of the act.

In the general discussion of this question by the members, attention was called to the fact that it was the impression of the speakers that the Commission was, at least to some extent, fearful of the results of attempting to amend the law so as to provide for appeal from negative orders. In this connection emphasis was placed upon the settled law, confirmed by various decisions of the United States Supreme Court, establishing the absolute jurisdiction of the Commission over certain questions, including all questions of fact, and that under the present state of the law there was no appeal from the decisions of the Commission in that regard, the fear being that attempting to amend the law would have the effect of disturbing that jurisdiction which would be unfortunate.

The discussion in favor of an amendment of this kind went to the point that the present law is inequitable in that it gives the carrier the right to appeal from orders of the Commission based upon errors of law, and that the shipping public ought to have the same right.

During the discussion of this question reference was also made to the fact that when the Hepburn act was before Congress for consideration one of the questions given most serious consideration was that that law as originally drafted gave the Commission absolute power to decide certain questions without any appeal from these decisions by the carriers. In other words, that it deprived the carriers of their day in court and that no administrative body should be empowered to pass finally upon a proposition without a review of such questions by the courts. Amendments were then made to the original act as proposed, which amendments resulted in giving the railroads the right to appeal on certain questions of law, first among which was that of confiscation of property. The difficulty of a shipper raising that question was referred to in the discussion.

During the discussion it was suggested that the section of the act to regulate commerce providing for appeal be amended so as to modify the word "order" by adding the words "whether affirmative or negative."

The discussion also brought out the fact that the United States Supreme Court has never decided a case based upon whether the complainant in a suit was a shipper or a carrier, but has based its decisions upon the character of the order, and that the trouble has been that whenever a shipper has gone into court contending that an order of the Commission was affirmative, the Supreme Court has held that it was negative, and vice-versa when the carrier has gone into court on what has been considered by the shipper to be a negative order the Supreme Court has held it to be an affirmative order.

Upon motion, made and carried, the question was referred back to the Legislative Committee, with instructions to give consideration to the fact that any amendment to the law might disturb the present status as to the absolute jurisdiction of the Commission over questions of fact, and report whether or not, in its judgment, taking this phase of the question into consideration, it would be advisable in the interests of the members of the League to propose any amendment looking to securing the right of appeal for shippers.

Amending the Law or Rules of Practice of the Interstate Commerce Commission to Give Litigants the Right to Review Findings of Examiners and File Exceptions and Objections to Same, Prior to Decision by the Commission

The Chairman of the Legislative Committee reported that the Legislative and Executive Committees had both very thoroughly discussed this

proposition at numerous meetings and finally undertook to ascertain the views of the Commission in respect to the same, believing this would be profitable, as it is something that can be most easily accomplished, if thought desirable, by an addition to the rules of practice of the Commission. It was pointed out in the discussion of the question that such an arrangement would be in line with the usual custom of the courts which employ masters to submit findings, these findings being subject to consideration by the litigants before they are passed upon by the court itself.

In the discussion it was stated that there had been a suggestion to the effect that the parties to a case in filing their briefs, instead of briefing their testimony, simply point out clearly the essential facts which, according to their view, had been proven by their testimony, giving reference to the page of the record. In this way the Commission might have before it the points presented and be able to eliminate much of the argument and of the time now consumed in ascertaining the facts upon which contestants rely.

Upon motion, made and carried, this subject was left with the Legislative Committee pending continued investigation, the committee to bring in a further report at the next meeting of the League.

The meeting adjourned at 12:30 P. M. to reconvene at 2:30 P. M.

Afternoon Session

The meeting was reconvened at 2:30 P. M.

REPORT OF SPECIAL COMMITTEE ON STOP-OVER IN TRANSIT TO COMPLETE LOADING OR PARTLY UNLOAD

The committee submitted the following report:

The committee appointed for the purpose of representing the League in the proceedings before the Interstate Commerce Commission in I. & S. Docket 549, involving tariffs by which the carriers proposed the cancellation of the stop-over privilege, begs to submit the following report:

In order to get information as to the extent of the use of the privilege and the demand for its continuance, a questionnaire letter was sent out to the members of the League. From the replies to these letters it appeared that the commodities using the privilege to the largest extent were agricultural implements, stone-ware, packing house products, paper, lime, cement, poultry,

oysters and bananas. Hearings were held before Examiner George T. Bell at Chicago on April 30, May 18, 19 and 20. Members of the committee assisted and co-operated with the members of the League interested in the proceedings. The chairman of the committee presented testimony on behalf of the League, calling the attention of the Commission to the following facts:

1. That by the use of the stop-over privilege there is transported in carload units a large tonnage of freight which would otherwise be forced to an expensive L. C. L. movement, or some other expensive method of distribution.

2. That a large saving in transportation expense is accomplished, not only to the shippers but to the carriers as well, with the probable result that the net revenues of the carriers are increased rather than decreased.

3. That the stop-over car avoids the loss and damage that is incident to less than carload handling and provides an expeditious movement otherwise impossible, which is of special value to commodities that are either seasonable or have to move under refrigeration.

The evidence presented at these hearings by the carriers made clear that the purpose of their proposal to withdraw the stopping-in-transit service was to force into less-than-carload movement the tonnage that is now moving in stopping-in-transit cars, with a view of obtaining less than carload revenue on such shipments. Your committee took the stand that such action would result in economic waste to the carriers, an unreasonable burden upon the shippers, and was entirely out of harmony with either good transportation or good public policy.

The largest number of members in the League interested in the proceedings were those connected with the agricultural implement lines, who were represented by Mr. E. J. McVann as counsel, and your committee endeavored to co-operate as fully as possible with Mr. McVann. A very comprehensive brief was filed by Mr. McVann for his clients. By a mutually satisfactory arrangement, this brief was adopted as representing the views of the League, and it was so indicated in the brief. Oral argument was held before the Commission on June 19, at which a brief statement was made by the chairman of your committee in behalf of the League and its interest in the principles involved in this case.

The committee is pleased to report that as an immediate result of the assistance rendered to the Whitaker Paper Company, of Cincinnati, an application on the part of their Traffic Manager,

Mr. W. S. Groom, for membership in the League was made, and the committee has received a letter expressing a very sincere appreciation on the part of his company for the stand of the League in this case.

The committee confidently believes that upon the record made in the case, the Commission will hand down a decision requiring the continuance of this service on at least those articles on which it was shown the stop-over is largely used.

Respectfully submitted,
H. F. Lindsay, Chairman.

Supplemental Report of the Committee on Stop-Over in Transit

Since the filing of the report of the committee on the stopping-in-transit case, the Commission has handed down its decision, fully sustaining all the contentions made by your committee on behalf of the League, and ordering a continuance of the stopping-in-transit service. The Commission in its decision puts the stop-over service on a parity with reconsignment, milling, storing and fabricating-in-transit, and upholds not only the propriety of this service, but its authority to require the carriers to provide it.

The order of the Commission suggests that not all the existing rules governing the service are approved by the Commission, and that on some commodities an indefinite continuance of the privilege is not required. While the expression of the Commission in regard to these matters is not entirely definite, your committee is of the opinion that the carriers will be permitted to eliminate the stopping-in-transit service on a few commodities, for which no demand was made by any shippers at the hearings before the Commission.

It is our opinion that the reference to the rules and regulations which are not approved are probably rules which provide for the absorption of switching charges at stop-over points, where the absorption of these switching charges deprives the carrier of the usual revenue or charge for stopping the car. A dissenting opinion is to be written by Commissioner Harlan, but has not been published at the time of the writing of this report.

Respectfully submitted,
H. F. Lindsay, Chairman.

Upon motion, made and carried, the report was received and filed and the special committee discharged.

REPORT OF LEGISLATIVE COMMITTEE (Continued)

Amending the Law to Provide One Period of Time for Beginning All Actions Relating to Transportation Charges

The chairman of the committee invited attention to the recommendation of the Interstate Commerce Commission that a period of three years be established for beginning all actions relating to transportation charges. Under the present state of the law the statute of limitations for the beginning of proceedings by shippers to recover reparation on account of unreasonable rates is two years; the statute of limitations for the beginning of actions by carriers to recover unpaid transportation charges from shippers are provided by the several states and vary in the different states, generally providing longer periods than two years; and the statute of limitations for the initiation of criminal prosecutions for failure to collect or pay the full amount of legally established transportation charges is three years.

Reference was made to the previous action of the League (Page 19, April, 1914, meeting) endorsing this recommendation of the Commission and urging its enactment into law. No action was taken at this time and previous action endorsing this recommendation therefore continues to be the action of the League.

Legislation as to Uniform Classification

The chairman invited attention to previous action taken by the League (Page 24, April, 1914, meeting) to the effect that it was opposed to any legislation taking out of the hands of the carriers the making or initiation of classification and stated that the Legislative and Executive Committees now brought the matter before the League again to ascertain if at this time it was the desire of the League to reconsider that action.

In the discussion of the question it was pointed out that it was the view of some that there was at the present time ample authority in the law for the Commission to make a uniform classification if it desired to do so, and that it was understood that the railroads composing the Uniform Classification Committee had been notified by the Commission that unless the work of that committee was brought to some definite conclusion, the Commission would take the matter up. In this connection it was suggested that the Commission need not necessarily initiate a classification because it might proceed to undertake a general investigation of the present classifications and make a finding which would in effect bring about a

uniform classification. In support of this position, it was pointed out that precisely the same language is applied in the law to unjust and unreasonable "classifications" as to "rates," namely, that "all unjust and unreasonable classifications are prohibited."

It was the recommendation of the chairman of the committee that no additional legislation is necessary because the Commission at the present time has full power to take cognizance of the situation and go ahead with any recasting of the classification desired.

Upon motion, made and carried, the recommendation was adopted, leaving the action of the League in statu quo.

Bill of Lading Legislation

The chairman of the Legislative Committee reported that the American Bar Association, at its last meeting, had before it a report to the effect that the so-called Pomerene Bill, which had passed through two sessions of the Senate but in both cases failed in the House of Representatives, failed of enactment because of certain objections made by members of the House committee, and that these sections have now been made unnecessary by the passage of the Cummins law, and that the Pomerene Bill will be reintroduced in the next Congress, leaving out these two sections, so that we can look for favorable action upon same.

Upon motion, made and carried, this subject was continued with the Legislative Committee until the bill is reintroduced, in order that the subject matter of same as actually proposed may be given consideration.

(The members of the League will recall that the League has previously on several occasions endorsed this legislation and that its purpose is to fix the status of the bill of lading as a commercial instrument).

Amendment of Cummins Law

The following report was presented on behalf of the Legislative Committee, and upon motion, made and carried, adopted:

In pursuance of instructions of the Executive Committee, the Legislative Committee begs leave to report that it has unanimously agreed that the operation of the Cummins Act should be restricted so as to exclude from its provisions "Personal and sample baggage and commodities checked as baggage, and all shipments transported by express," and it is recommended to the League that the Legislative Committee be authorized and instructed to support legislation to this effect.

In the discussion of this question it was pointed out that the purpose of this amendment to the Cummins act is not to in any way restrict the liability of the express companies, but to permit the shipper by express to ship under the general express rules and regulations, predicated upon the value as it might be stated by him, and not require a statement of actual value. The same explanation being true of the action to exempt baggage.

Distinction Between Cases of Reparation Resting Upon the Unreasonableness of Rates Challenged vs. Those Resting on Discrimination

The chairman of the Legislative Committee pointed out that this matter had been brought up with the idea of making the law specific as to the measure of damages to which a claimant was entitled in cases of reparation, but that in view of the decision of the courts no legislation was now deemed necessary. The decisions of the courts having established the law that in cases of reparation resting upon the unreasonableness of the rates challenged, the measure of the damage resulting from the imposition of such unreasonable rates is the difference between the rate charged and the rate found reasonable by the Commission; while in cases of reparation resting upon discrimination, the measure of damages, if any, might be more or less than such difference between the rates.

Particular attention was invited to the case of the Darnell-Taenzer Lumber Company et. al. vs. Southern Pacific Co., et. al., decided by the United States Circuit Court of Appeals for the sixth circuit, the decision of this court upholding the distinction referred to above, which distinction has been made by the Interstate Commerce Commission in numerous cases. Attention was directed to the fact that an effort was made to secure a review of this decision of the United States Circuit Court of Appeals by the United States Supreme Court, which the latter court refused to grant, thus approving the decision of the Circuit Court and in effect making it the decision of the United States Supreme Court.

By unanimous consent the report of the Legislative Committee was adopted and no further action taken.

Amending Fourth Section of Commerce Act So That Through Rates Shall Not Exceed Combination of Locals, Even Though One Factor is an Unchallenged State Rate

The chairman of the Legislative Committee reported that the Executive Committee had ap-

pointed a special committee to take up with the Interstate Commerce Commission the question of the right of a shipper to bill a through interstate shipment to an intermediate point and rebill at the local rate in order to secure the benefit of such combination where same is lower than the through interstate rate from point of origin to final destination.

This special committee reported that the Commission had reiterated the opinion expressed in correspondence and in decisions that the lawful published through interstate rate must be applied on such shipments and that the device of rebilling at an intermediate point to secure the lower combination of rates is unlawful. In making this reply the Commission had pointed out its ruling No. 56, paragraph B, of Tariff Circular 18-A, to the effect that it would be its policy to consider a through rate or fare which is higher than the sum of intermediate rates or fares between the same points as *prima facie* unreasonable, and that the burden of proof would be upon the carrier to defend such higher through rate or fare. This special committee reported that it had pointed out to the Commission the discrimination which in its opinion existed in favor of the man located at the intermediate point.

The special committee suggested that while, in accordance with the rule of the Commission in its tariff circular as above referred to, shippers had reasonable opportunity for relief by bringing these matters to the attention of the Commission, providing the railroads would not adjust such rate situations of their own accord where the combination rates are subject to the act, that the fourth section of the act should be amended so as to condemn not only through rates which exceed the aggregate of such intermediate rates subject to the act, but also through rates which exceed the aggregate of intermediate rates, one factor of which is an uncontested intrastate rate. This suggestion of the special committee was referred to the Legislative Committee by the president of the League and the Legislative Committee therefore recommended that the fourth section of the commerce act be amended so that through rates shall not exceed the combination of locals, even though one factor is an unchallenged state rate.

It was pointed out in the discussion of this question that this amendment had nothing to do with approving or disapproving the acts of state commissions or the rates in the states. The recommendation of the Legislative Committee being made solely for the purpose of enlarging the scope of the fourth section as indicated, making it a little broader as to those factors which

might be considered in making up a combination which is less than the through rate.

Upon motion, made and carried, the recommendation of the Legislative Committee was adopted with the addition that the Legislative Committee be instructed to work in the direction of amending the fourth section of the act to regulate commerce so that through rates shall not exceed the combination of lawful rates even though one factor is a state rate which has not been enjoined or set aside by competent authority.

REPORT OF TARIFFS COMMITTEE

Consolidation of Individual Tariffs in Official Classification Territory in Association Issues

The following report was submitted on behalf of the committee:

Referring to the subject of consolidation of tariffs of individual carriers in Official Classification territory in association issues, which was discussed at the May meeting, at which time the committee was instructed to continue its work and make further report to the League.

Your committee has but one concrete proposition before it, submitted on behalf of shippers located at Missouri River points, and who have suggested the establishment of association issues covering the basing rates between points in Central Freight Association and Trunk Line Territory, and Peoria, Chicago, St. Louis, and upper Mississippi River Crossings. It has been suggested as a basis to work on that these rates be generally covered by the publication of four tariffs, as follows:

One tariff naming Westbound Rates from C. F. A. Territory to Chicago, Peoria, and Mississippi River Crossings.

One tariff naming Westbound Rates from Trunk Line Territory to the same basing points.

One tariff naming Eastbound Rates from Chicago, Peoria, and Mississippi River Crossings to C. F. A. Territory.

One tariff naming Eastbound Rates from the same basing territory to Trunk Line points.

In order to obtain an expression from the carriers of their views on this proposition, I wrote ten of the most important lines in C. F. A. and Trunk Line Territory, with the following result: Against the proposition, six roads; declining to express views either for or against the proposition, but suggesting the proposition be referred to the Central Freight Association and Trunk

Line Association, three roads; in favor of the proposition, none; failed to reply, one. The replies from the carriers which object to the proposition are based on the theory that there would be no economy in this proposition because it would still be necessary for them to continue publishing tariffs naming rates to and from stations taking Chicago, Peoria and St. Louis rates, but which are not basing points on business to and from Trans-Mississippi Territory.

It was also stated that the tariffs by nature of their size would necessarily be cumbersome, and therefore very much complicated. In order that a clear understanding may be obtained, I quote extracts from replies received from several of the lines:

From one carrier: "Such agency issues would be extremely expensive, and regardless of care would become complicated. The carriers would still be compelled to publish rates to and from points outside of Chicago and Peoria, and it does not increase our expense any to carry rates in such issues to and from Chicago and Peoria. Taking everything into consideration, I do not view with favor the establishment of Agency Tariffs such as proposed."

Another carrier writes: "From the fact that you propose but two tariffs in each direction I infer that such an issue as proposed contemplates only the publication of class rates, as I think it would be hardly satisfactory to make tariffs, such as proposed, combining class and commodity rates. There are, as you probably know, in addition to separate tariffs on specific commodities, such as iron and steel articles, brick, drain tile and other clay products, cement, lumber, etc., now issued from Trunk Line and C. F. A. Territory to the West by each of the various carriers, these tariffs being issued principally for the convenience of shippers and others dealing exclusively in such commodities. A consolidation of such rates in a joint class and commodity issue or in a joint commodity issue would doubtless not prove satisfactory to dealers and shippers in these commodities as the present plan. If, however, to overcome this, separate joint tariffs on these individual commodities were issued, it will, as you can see, very largely increase the number of issues above that which you contemplate.

"A further feature to be considered is that in our present individual tariffs the rates applicable on Trans-Mississippi traffic are carried in the same tariffs that apply to Chicago, Peoria, and Mississippi River points proper. The publication, therefore, of agency issues to supersede these particular rates would, instead of reducing the expense as you suggest, very largely increase it over

that now incurred for the reason that it would, as you can see, not enable carriers to discontinue any of their present issues, as we have no separate issues applying only on Trans-Mississippi River traffic. It would, also, in some cases, result in a duplication of rates as for instance, to Chicago, Peoria, St. Louis and Mississippi River Crossings, Hannibal and south, to which points there are no differences in the local and proportional rates."

From another carrier we have the following: "At the present time, practically all eastbound rates both to C. F. A. and Trunk Line from Mississippi River points are published by Mr. Cameron, however, as to including all rates from Chicago to all C. F. A. and Trunk Line points, it appears that a tariff to contain all of this information in detail would be so voluminous as to be impractical. Furthermore, it would be a very expensive publication and as far as this line is concerned would only be an added expense as we would have to practically make a reproduction of same to cover rates from stations on our lines to immediately east of the Chicago District. The only way a publication of this kind would reduce the printing expense of the railroads would be to incorporate all of the rates from C. F. A. Territory applying to Trunk Line points in one issue, and on account of the numerous groups in C. F. A. Territory and the many different routes leading to Trunk Lines all of which should be specifically shown in order to make the tariff of any particular value, would make the issue, to my mind, a rather complicated one."

A reply from one of the principal Trunk Line roads is as follows: "This is a matter which has been discussed by the various carriers on numerous occasions, and although there are advantages such as those which you mention, yet there are also disadvantages, in addition to that of taking out of the hands of individual issuing carrier the immediate control of its own rates."

If after considering the replies received from the various carriers the League feels that this is a proposition which should be adopted, we would recommend that the matter be referred back to the Tariffs Committee with instructions to submit same to the chairmen of the Trunk Line Association and Central Freight Association for consideration of the roads interested. When placed on the docket of the two associations, the members of the League who are directly interested in the publication of these rates would then have an opportunity of obtaining the support of the roads individually.

Respectfully submitted,
Tariffs Committee,
M. F. Doyle, Chairman.

The chairman of the Tariffs Committee inquired in connection with this report whether in view of the objections made by the carriers the League desired to go on record as urging the proposition of the four tariffs referred to in the report.

Upon motion, made and carried, the report was received and the committee instructed to drop this particular subject.

RECEPTION TO COMMISSIONER CLARK

At this point the special committee appointed to meet and escort Commissioner Clark reported that the commissioner was about to appear and the meeting took a recess for ten minutes, during which time the members were individually presented to Commissioner Clark.

REPORT OF TARIFFS COMMITTEE (Continued)

Disposition of Fractions in the Establishment of Freight Rates

The Assistant Secretary reported that at the last meeting of the League held at Memphis, Tenn., recommendation made by the Executive Committee that the League present a resolution to the Interstate Commerce Commission to the effect that no fraction other than one-half cent be recognized in establishing freight rates and that a proper rule be formulated by the Commission making this effective, had been adopted by the League, and that since that time the matter had been submitted to the Commission. He further reported that the Commission had replied advising that if the shippers represented by the League, through their representatives, and the carriers, through their representatives, can agree in recommending the practice to have all freight rates stated in full cents or one-half cents per hundred pounds instead of using other fractions, the Commission will be disposed to look with favor upon such a proposal although not prepared at the present time to officially sanction this in advance.

The chairman of the Tariffs Committee stated that after making some investigation of this subject he desired to suggest that the League should investigate this proposition more thoroughly before committing itself further in this matter. That from such investigation as he had had time to make it appeared that it was necessary to give some further consideration to the effect of this change and also to deal more specifically with the method to be pursued in disposing of fractions as now published.

Upon motion, made and carried, the subject was continued in the hands of the Tariffs Committee for further study and report at the next meeting.

REPORT OF BILL OF LADING COMMITTEE

The following report was submitted by the committee:

It will be recalled that the Interstate Commerce Commission undertook on its own initiative a general investigation as to the terms and provisions of bills of lading, particularly confining its hearings to the domestic form of bills of lading, and that this investigation was concluded and oral argument made before the Commission on March 4, 1914. In this case the League was represented through the Bill of Lading Committee, presented evidence as to objections to the conditions of the bill of lading, filed brief and made oral argument. Since that time we have been awaiting the decision of the Commission.

In the meantime Congress, at its last session, passed the so-called Cummins law which has a direct bearing upon the bill of lading question. The Commission in a report expressed its view to the effect that the Cummins law would undoubtedly make it necessary to re-open the bill of lading case and that when this was done the entire question would probably be gone into dealing with all the various forms of bills of lading and the terms and provisions thereof. The League had already prior to and after the passage of the Cummins amendment made application to the Commission for a re-opening of the case.

The important effect of the passage of the Cummins law is to absolutely prohibit a carrier to exempt itself in any way, by any limitation of any character whatsoever, in any contract, receipt, rule, or regulation, from its common law liability for any loss, damage, or injury to property caused by it. Conversely the shipper is prevented from in any way releasing the carrier from its liability. In this respect the situation is quite different than that which existed prior to the passage of the Cummins law.

In view of this situation your committee is of the opinion that the best interests of all concerned will be served by eliminating from the bill of lading all terms and provisions provided by law and insert only such as it is thought should be put in there by way of information.

It is, therefore, recommended that all of Section 1 of the conditions of the present Uniform Bill of Lading as published in Official Classification territory should be eliminated, as this is

simply a statement of the law on the subject of liability of carrier for loss, damage or delay caused by it and of the causes for which it is not liable. Sections 2, 6, 7, 8, 9 and 10 should also all be eliminated, as the portions of these sections which are not contrary to law are simply a statement of the law.

In other words, all of the sections above referred to in no way constitute an agreement between shipper and carrier, but are merely a statement of the law.

This is also true of Section 3, except that inasmuch as this section covers the question of time for filing notice of or for the filing of claims, and for the institution of suits, these being provisions of the law which the shipper must observe in order to protect his right of recovery for loss, damage or delay, it is thought advisable that this should be printed as a condition of the bill of lading for the information of shippers. This is also necessary from the point of view of the carrier as the law fixes a minimum time within which these steps for recovery must be taken, but does not fix the maximum time, and it is necessary that the carriers state the length of time upon which they determine.

Section 4 should be eliminated and the following substituted: "All property shall be subject to necessary cooperage and baling. The actual cost of same shall be charged to the owner, except when damage has been caused by the carrier."

It is also thought that the first and second paragraphs of Section 5 which set forth the necessity for party entitled to receive property to remove it or be subject to a charge for storage and also sets forth the right of the carrier to send goods to public warehouses, should be continued. This section also contains a similar provision as to demurrage charges on cars held for loading or unloading.

On the face of the bill of lading a change will, of course, have to be made in reference to the bill of lading being issued under Order No. 787 of the Interstate Commerce Commission, dated June 27, 1908, and also by authority of the report of the Commission in case No. 49 (Ex. Parte), May 7, 1915, substituting therefore reference to such order as the Commission may issue upon the conclusion of further hearings after reopening the case.

Reference in the bill of lading itself, or in the classification wherein the bill of lading is published, stating that property not shipped subject to the terms and conditions of the bill of lading

will be carried under the terms of Rule 1 of the classification, which provides for ten per cent higher rates when the bill of lading is not used, should also be eliminated. In fact Rule 1 of the classification should be stricken out.

The receipt portion on the face of the bill of lading should be changed by striking out the last sentence, which reads as follows:

"It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns."

We also believe that the last portion of the previous sentence which reads, "which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination," should be stricken out and these words put in: "To be carried to said destination." So that with these changes it would simply be a receipt for the goods to be carried to destination.

The recommendations made with respect to domestic form of bill of lading apply to the straight bill of lading, but of course also apply to the order bill of lading except that the order bill of lading will be so designated and carry the present provision as to surrender of the original order bill of lading properly endorsed before delivery of the property is made by the carrier.

The Uniform Bill of Lading as in use in Western Classification territory and the Standard Bill of Lading as in use in Southern Classification territory to be supplanted by the same form of bill of lading as suggested for Official Classification territory so that there will be one Uniform Bill of Lading in all three territories.

The same changes as are recommended in the domestic form of bill of lading are also recommended with respect to the export form of bill of lading.

Respectfully submitted,
Bill of Lading Committee,
W. M. Hopkins, Chairman.

The chairman of the Bill of Lading Committee called attention to the application made on behalf of the League to the Interstate Commerce Commission for a reopening of the bill of lading case

in view of the passage of the Cummins law and explained that the report submitted had been prepared with a view to making recommendations before the Commission when the case is set for hearing.

It was pointed out in the discussion that the report of the committee was in the direction of a clean bill of lading putting only on the bill of lading such conditions or such statements as may be required by way of information.

Upon motion, made and carried, it was voted that the League endorse this idea of a clean bill of lading as presented in the report.

Upon further motion, made and carried, the report of the committee was accepted with the amendment that the time limit for filing of claims be increased from four to six months and that the committee be empowered, with the approval of the Executive Committee, to act along the lines suggested in their report in case an emergency arises before the next meeting of the League. It was understood that otherwise the report would come up for further consideration at the next meeting of the League.

Export Form of Bill of Lading

The president reported that he had discussed the bill of lading question with the Executive Committee, in view of the delay experienced as to the reopening of this case, and having particular reference to the terms and provisions of the export bill of lading. He reported that he had advised the committee that a formal complaint was about to be filed with the Interstate Commerce Commission on behalf of the milling interests of the United States against the present conditions of the export bill of lading and that he had requested authority from the Executive Committee to file such a complaint on behalf of the League as representing all shipping interests. The Executive Committee had given such authority, subject to co-operation with the Bill of Lading Committee of the League and now desired the authority of the League itself in respect to this matter. It was explained that the League would not be put to any expense in this connection except the mere nominal expense of printing of the complaints and brief if necessary.

Upon motion, made and carried, the action of the Executive Committee in authorizing the filing of this complaint, was approved.

The session adjourned at 5:30 P. M., to reconvene at 10:00 A. M., the following day.

Evening Session

The evening was devoted to a dinner held at the Toledo club.

At this dinner those present were favored with an address by Mr. Frank L. Mulholland, past president, International Association of Rotary clubs, who took the place of Mr. W. A. Gosline, Jr., president Toledo Commerce club, in extending a word of welcome in behalf of Toledo. Mr. Francis B. James, attorney, Washington, D. C., also responded with a very interesting address.

The principal address of the evening was delivered by the Hon. Edgar E. Clark, Member, Interstate Commerce Commission.

These addresses are printed herein at the conclusion of the regular proceedings of the meeting.

FRIDAY, SEPTEMBER 10, 1915

Morning Session

The meeting was called to order at 10:00 A. M.

REPORT OF COMMITTEE ON CAR DEMURRAGE AND STORAGE

Uniform Code of Track Storage Rules

The following report was submitted by the committee:

Team track storage rules are now in effect at a number of points throughout the country, and embraced in the list are the following cities, with a few additional ones as to which I am not informed: New York, Chicago, Indianapolis, Cincinnati, St. Louis, Kansas City and Omaha.

The faulty construction of the tariffs providing for track storage charges and rules was directed to the attention of your chairman by several of our members, by reason of the fact that the carriers under their publication were applying track storage charges, where under the demurrage code such shipments would be free of demurrage. The faulty construction of the tariffs applicable in New York was the subject of a proceeding before the Interstate Commerce Commission, which resulted in the tariffs being amended so as to provide that track storage charge should not be assessed in the case of weather interference and for other causes provided for in the demurrage code.

Based upon the report made by our members and subsequent investigation, I found that the same or greater faults existed in that these track

storage tariffs made no provision for the exemption of holidays, notification, and conditions under which team track storage charges should not be applied, particularly when due to causes beyond the control of the consignee as in the case of weather interference, bunching, railroad errors, etc., provided against in Rule 8 of the demurrage code.

With the view of obtaining the same exemptions in the case of team track storage charges where effective, as was permitted under the demurrage code, we have been in negotiations with Mr. Arthur Hale, chairman of the American Railway Association Committee on Relations, with a view of having that association recommend the adoption of a uniform code to be applied at cities where these track storage charges prevail, and particularly with the view of having incorporated in such track storage tariffs the exemptions to which I have made reference.

As a result of these negotiations, a draft for a proposed uniform track storage code has been

prepared, a copy of which is herewith submitted. It is the recommendation of our Committee that the proposed uniform code be approved, and in making this recommendation it is not as an approval of the application of team track storage charges, or an extension thereof, which are matters subject to local conditions, but our recommendation is based on the securing of those exemptions from track storage where such tariffs are in effect as would be applicable in connection with the assessment of demurrage charges.

The rule recommended by the American Railway Association Committee on Relations is to be submitted to the American Railway Association at its September meeting for approval. It is also understood that if favorable action is taken on this proposed code, it will then be submitted to the Interstate Commerce Commission for its tentative approval.

Respectfully submitted,
Committee on Car Demurrage and Storage,
J. C. Lincoln, Chairman.

Draft for Uniform Track Storage Rules

Cars held for or by consignors or consignees on public delivery tracks within the switching limits of.....for loading, unloading, forwarding directions or any other purpose, are subject to the following track storage charges which are in addition to the regular Car demurrage Charges provided in Tariff No.

The application of the track storage charges will be subject to the rules and provisions in said tariff which apply to cars on public delivery tracks (except RULE 9—Average Agreement).

1. For the first two (2) days upon which demurrage accrues the track storage charge will be \$.....* per day or fraction thereof.
2. For each succeeding day the track storage charge will be \$.....** per day or fraction thereof.

* Not less than \$1.00.

** Not less than \$2.00.

In the discussion of this question it was pointed out that, as set forth in the report, it was not the purpose to approve the application of team track storage charges, or an extension thereof, which the committee submits are matters subject to local conditions, but that the suggestion for this uniform code of track storage rules is for the purpose of securing the same exemptions as to track storage charges where they are in effect, as are applicable in connection with the assessment of demurrage charges, namely, as to holidays, weather interference, bunching, etc., and it was also suggested that this simple code had been recommended, making the track storage subject to the same rules as demurrage so that when the demurrage rules are changed the track stor-

age rules would automatically have the benefit of such changes, without the necessity of keeping two full sets of rules, one for track storage and the other for demurrage, lined up in harmony with each other.

In criticism of the proposed code it was suggested that there was some danger in approving such a uniform code, as it might have the tendency of extending the practice of assessment of track storage charges to places which now have no such charge and further that it appeared the committee should make some further investigation as to just how these track storage rules are now applied at the places where they are in effect and ascertain what the result of the adoption of these rules will be at such places.

Upon motion, made and carried, the report was referred back to the committee with a request that they make a further study of the question and bring in a final report at the annual meeting.

Demurrage on Private Cars

The committee submitted the following report:

Owing to general dissatisfaction with the present demurrage code (both by the owner and the user of a private car) in the application of demurrage charges upon private cars and their belief that the rule is unjust in its terms and conditions, I have for some time, in an effort to relieve the situation, been engaged in negotiations with Mr. Arthur Hale, and members of his Committee on Relations, with reference to a modification of the private car rule (Rule 1, Section C, of the National Car Demurrage Code), with the view of preparing a new rule that could be submitted to our respective organizations for adoption, and in turn to the Interstate Commerce Commission for their tentative approval.

Our views have been so opposite that progress has been slow, as I have tried to get the committee to agree upon a draft that will be more liberal in its terms and would more nearly meet the views of the owners and users of the private car with whom I have been in correspondence.

Our several conferences have resulted in the American Railway Association Committee on Relations submitting as their final draft for our consideration and approval new Rule 1, Section C, Par. 1 and Par. 2, as per memorandum attached, in which has been embraced some of the provisions for which we contended and which proposed rule is a vast improvement upon the old one, although not entirely satisfactory to your committee. We are submitting their conclusions to you for your examination and approval or crit-

icism. If not approved, kindly point out in what particulars not satisfactory and indicate the changes suggested. Also point out wherein you think the rule defective and might lead to further complications.

Your particular attention is called to the definition of "private car" and "private track." The definition as to private tracks is predicated upon a ruling of the Commission. In the definition as to private cars we feel that some provision should be made for the private car that is being operated under a lease. It is the position of the American Railway Association Committee that while a lease is a temporary ownership and that cars regularly leased should be free from demurrage on the tracks of the lessee, it believes that no lease should be recognized unless it is of such a permanent nature that the name of the lessee can appear on the car.

While the suggestion was offered in line with the views of some of our members that private cars should be immune from demurrage when on private tracks other than the owner or lessee, the American Railway Association say they cannot consent to such a rule, although they believe that when a car is at home its owner should be allowed to do exactly what he pleases with it and when at home the car should be free from demurrage.

It is suggested by a large user under lease of private cars that Section C-1 should be changed by adding after the word "ownership" some wording to cover cars under lease, or an explanation or definition should be made defining the word "ownership" as including cars leased to shippers by private car owners.

Respectfully submitted,
Committee on Car Demurrage and Storage,
J. C. Lincoln, Chairman.

(See next page for new rule.)

Demurrage Rule 1—Section C—Private Cars

Proposed Form

Rules

Section C-1. Private cars on private tracks when the ownership of the car and track is the same.

Definitions.

Private Car.—A car having other than railroad ownership. Private cars must be marked with the full name of the owner which will be conclusive as to ownership.

Private Track.—A track outside carrier's right of way, yard and terminals and of which the carrier does not own either the rails, ties, road-bed or right of way.

Section C-2. Empty private cars stored on carrier's or private tracks, provided such cars have not been placed or tendered for loading on the orders of a shipper.

Note.—Except as otherwise provided in Section C, paragraph 1, private cars, while in railroad service, whether on carrier's or private tracks are subject to these demurrage rules to the same extent as cars of railroad ownership. Empty private cars are in railroad service from the time they are placed by the carrier for loading or tendered for loading on the orders of a shipper. Private cars under lading are in railroad service until the lading is removed and cars are regularly released.

Instructions and Explanations.

Section C-1. Private cars held for delivery upon the tracks of their owners shall not be released from demurrage until placed upon such tracks.

Private cars belonging to an industry which does its own switching, placed upon an interchange track for forwarding and refused by the carrier's inspector, shall be released from demurrage if withdrawn by the industry from the interchange track within twenty-four (24) hours after rejection.

Section C-2. Empty private cars stored on tracks not owned by the owners of such cars and switched by carriers, taking for loading without order or requisition from shipper and without formal assignment by carrier's agent, shall be recorded as placed for loading when actual loading is begun.

A communication from the chairman of the committee was read to the League in connection with this report, in which he stated that he did not feel his committee was fully competent to deal with this particular rule involving the use of private cars, as the owners and users of same are not largely represented upon the League committee. And he therefore recommended that unless the League passed upon the above report and agreed upon some definite proposition by way of instructions to the committee, a special committee should be appointed composed largely of the owners and users of private cars to act in conjunction with the Committee on Car Demurrage and Storage in further negotiations with the American Railway Association.

Upon motion, made and carried, report was referred to a special committee, as suggested by the chairman of the regular committee of the League, for consideration and report, this special committee to be representative of private car owners and users.

The president, pursuant to this action, appointed the following committee:

C. A. Jennings, American Cotton Oil Co., Chicago, Ill., chairman; W. A. Clark, New England Retail Coal Dealers' Association, Northampton, Mass.; F. H. Frederick, Swift & Co., Chicago, Ill.; H. W. B. Glover, Southern Cotton Oil Co., Richmond, Va.; W. H. McGuffey, Proctor & Gamble Co., Cincinnati, Ohio; G. H. Stevenson, General Chemical Co., New York, N. Y.; D. P. Chindblom, National Industrial Traffic League, Chicago, Ill.

REPORT OF FREIGHT CLAIMS COMMITTEE

Unnecessary Tracing of Freight

The committee submitted the following report:

We would once more direct the attention of our members to the great abuse of tracing. The practice of following shipments with so-called

tracing immediately after shipments have been made, and before there has been time for them to reach destination, is not only utterly useless, but creates such a burden that the legitimate tracer for goods which really have been delayed, entirely fails in efficiency.

The very large number of unnecessary tracers are sent out because consignees do not seem to keep proper record of their incoming shipments. In the case of the company with which your chairman is connected, it is no exaggeration to say that there are received on the average of ten to fifteen requests every month for tracers on goods where the tracing develops the fact that the shipments have made good time, and have been delivered some days before tracers were requested. What the shippers and receivers of freight desire is good and prompt service. We believe that the carriers sincerely desire to furnish such service and we should certainly be willing to fully co-operate with them in reducing the awful volume of tracers which are inflicted upon them and which do not serve any useful purposes.

Respectfully submitted,
Freight Claims Committee,
J. M. Belleville, Chairman.

Upon motion, made and carried, the report of the committee was adopted.

Incomplete Expense Bills

The committee submitted the following report:

In response to our circular issued to members August 9, asking for criticism of the standard form of freight bills, or for any suggestion for improvement, your committee has received half a dozen replies. In these the main criticism is that the clerks do not fill out the blanks properly. Inasmuch as we have secured, on the part of the carriers, the adoption of the standard form of expense bill, which has been approved by the Commission, and as we further know that carriers have issued necessary instructions, it seems to your committee that the subject matter of these complaints is one that should be dealt with in a co-operative way. In other words, it is up to the receivers of freight to do the "policing." Many traffic managers are making it a rule, when incomplete expense bills are brought to their attention, to write to the proper officer of the offending railroad, reporting the matter, and asking that a remedy be applied. Your chairman has had occasion to write quite a good many letters of this kind and they have always been appreciated by the carriers, and a remedy promptly applied.

There has undoubtedly been a very great improvement in this respect during the last two years and with proper co-operation we believe complaints will be reduced to a minimum.

We have two letters making suggestions as to improvement in the form. One is that where there are a number of railroads in the town, the different roads should use different colored paper, so as to clearly distinguish between expense bills of different roads in the same town. The party making the suggestion states that the bills of three roads which he named are so much alike that it often causes a mistake in making settlements with the different railroads. It does not seem to us that this is a practical proposition and certainly not one that, in our opinion, the League could advocate.

The other suggestion is from an organization dealing solely with perishable articles requiring refrigeration, and in this letter there are two suggestions. One is that in the column shown for rate, this rate authority should be shown, also that a separate column should be provided for refrigeration charges, which charges should be filled out in full detail, showing place where iced, number of pounds furnished, and price.

Your committee is of the opinion that the suggestion as to showing rate authority is an impracticable one and would place an unreasonable burden upon the carriers in manifesting freight and making out expense bills.

Respectfully submitted,
Freight Claims Committee,
J. M. Belleville, Chairman.

Upon motion, made and carried, the report was adopted, without action as to proposed changes in forms.

Handling of Freight—Packing, Marking, Etc. (Manual of Instructions for Shipping Clerks)

The following report was submitted by the committee:

As is known by many of our members, the General Managers' Association of the Southeast, of which Mr. Chas. A. Wickersham is chairman, has been for a number of years conducting a very vigorous campaign toward the elimination of damage claims, and in this connection Mr. Wickersham has issued a manual of instructions to shipping clerks and is aiming to have a manual along similar lines put into circulation by all carriers.

In a recent letter Mr. Wickersham says:

"As to suggestions for your co-operation on our manual of instructions our thought was that there might be some matters on which the shippers may have found agents lacking in information as to how same should be handled, and in revising our manual we want to know of any such cases in order that we may cover any deficiencies, and therefore perfect the manual as far as possible. Perhaps a circular to your members outlining the thought actuating the railroads with the request for suggestions from them concerning the troubles which they have experienced will serve to develop such points of weakness. You may rest assured of our desire to reciprocate your co-operation whenever we can."

We shall be very glad to receive from our members and transmit to Mr. Wickersham any criticism or suggestions they may have to make on the above lines.

In this connection we wish to suggest to the League the question of the propriety and value of having a similar manual issued by the League for use of shipping clerks covering the whole question of packing, marking, and handling of freight, making out of shipping tickets and bill of lading, preparation of claims, tracing of freight, etc., printing same in a substantial form and making the booklet so complete and covering the ground so fully that no shipping clerk could afford to be without it.

We believe that such a publication would be of the very greatest value both to the shippers and carriers alike.

Respectfully submitted,
Freight Claims Committee,
J. M. Belleville, Chairman.

Upon motion, made and carried, the report of the committee was adopted and the committee instructed to prepare the manuscript for this manual, subject to final report to the League before publication.

Handling of Freight—Packing, Marking, Etc. (One-in-Ten Marking Rule)

The committee submitted the following report:

Effective March 1, 1915, Rule 3, of the Official Classification, as to marking of packages, was amended so as to require marking of all articles offered for shipment in less than carload lots. Exceptions, however, were promptly issued restoring the One-in-Ten Rule on iron, steel and

other similar commodities not put up in packages, also restoring the One-in-Ten Rule specifically on the following selected commodities: Flour, feed, cement, lime, plaster, charcoal in sacks.

At the last meeting of the American Railway Association the following resolution was adopted:

"Resolved, That the traffic associations be requested to eliminate so far as practicable all exceptions to the classification rules for the packing, marking and loading of freight."

In transmitting a copy of the resolutions to me, Chairman Hale, of the American Railway Association's Committee, stated:

"Some of our members have made statements indicating that a very large proportion of the astray freight, without marks, which accumulates at our 'old horse' stations, is freight which comes under the 'One-in-Ten' Exceptions, and has evidently gone astray on account of it."

Believing this to be a matter of considerable interest to our members we sent out on August 7 a circular to all our members, asking for an expression of their views and advice as to what effect the elimination of the One-in-Ten Rule would have on their business. We have received in response to this circular quite a variety of replies, but among them are a number of very serious protests against the abolition of this privilege. We submit the matter for discussion by, and instructions from, the League, but we are of the opinion that if the One-in-Ten Rule is continued in effect, it should not be by exception but be carried in the body of the classification.

Respectfully submitted,
Freight Claims Committee,
J. M. Belleville, Chairman.

Upon motion, made and carried, the League expressed itself to the effect that the One-in-Ten marking rule should be continued.

Upon further motion, made and carried, the League expressed itself as believing that this rule should not be continued by exceptions to the classification, but should be carried in the classification proper.

Liability of Carriers When Marks on Packages do Not Agree With Shipping Tickets

The committee submitted the following report:

In response to our circular of August 9th, which was sent out to our entire membership, we have received letters from four of our members citing

specific cases where shipping tickets and bills of lading were properly made out and where the forwarding and delivery were made by the carrier from the marks on the package, causing loss to the shipper, which following the ruling of the Commission, the railroad company refused to make good to the shipper.

We cite one case as an illustration:

Three bags of fresh meat were shipped from Philadelphia to Atlantic City, shipping ticket and bill of lading both plainly showing "John Smith" as consignee. So far as shipper is aware the bags were also marked "John Smith." The railroad company, however, claim that although they had a waybill for three bags meat, consigned "John Smith," Atlantic City, the three bags in question checked out of the car marked "Thomas Jones" and were so delivered, causing loss to the shipper of \$4.92, which thus far it has been impossible to collect from the carrier, although the claim is still alive.

It is our opinion that in this case the carrier is clearly liable. If the meat had checked out of the car without any billing and had been plainly marked "Thomas Jones" then the carrier would have been fully justified in so delivering, but as a matter of fact, they must have checked short three bags marked "John Smith" and over three bags marked "Thomas Jones." Certainly under such conditions some investigation should have been made before delivering the three bags in question to "Thomas Jones."

It is the firm conviction of your Committee that in the Conference Ruling made by the Commission upon this question, and their decision that marks upon the package should always govern in freight shipments as well as in express shipments, they cannot have had before them the following facts:

As is well known to our members the methods which have been followed for years by the express companies and the railroad companies in the waybilling of freight are entirely different. The express companies use no shipping tickets and have always done their waybilling and checking from the marks on the package. The railroad companies have always required shippers to fill out a shipping ticket and the waybilling is invariably done from this shipping ticket. In Rule 3, of the Official Classification, we find the following language:

"The marks on packages, bundles or pieces, which are required to be marked, must be compared with the shipping order and the bill of lading, and corrections, if necessary, made

by the consignor or his representative before the receipt is signed."

We believe this to be a good rule and one that should be observed and be binding upon both parties. The bill of lading itself forms a contract between the railroad and the shipper, being under the regulations signed by both, and consequently it seems to us clear that this contract should govern.

This seems to us so important a matter that we believe the League should take up some specific case with the Commission and endeavor to secure a revision of the ruling regarding this question.

Respectfully submitted,
Freight Claims Committee,
J. M. Belleville, Chairman.

Upon motion, made and carried, the report of the committee was adopted and the committee instructed to proceed accordingly.

Double Collection of Charges on Prepaid Shipments

The Committee submitted the following report:

The attention of our members is called to the following resolutions adopted by the Association of American Railway Accounting Officers at their meeting in Atlanta, Ga., April 28th-30th, 1915:

Resolution adopted at meeting of the Association of American Railway Accounting Officers, April 28th-30th, 1915, at Atlanta, Ga.:

"Whereas, Previous recommendations of this Association are as follows:

Page 41, Section 9, Paragraphs 1 and 2, Synopsis of 1912, Bills of Lading, read:

1—Uniform bills of lading (Straight and Order) have been recommended by the Interstate Commerce Commission. These forms provide spaces for showing advances and prepayment, and carriers should see that all charges accruing up to and including the point where the bill of lading is issued, which are to following to destination, and the amount of prepayment by shipper, are shown thereon in the spaces provided therefor.

2—It is recommended that when shippers' forms of bills of lading are accepted they should conform in all essential particulars to the uniform bills of lading.

Page 28, Section 4, Paragraph 3, Synopsis of 1912, reads in part:

3—*** When freight which has been prepaid at point of origin, either wholly or in part, is rebilled from a junction point, the rebilling agent shall show all charges up to the rebilling station as "advances," and the total amount of the original prepayment as "prepaid."

Page 85, Thirtieth Report, Resolutions 1 and 2, read:

1—Resolved—That the previous recommendations of this Association, that interline billing is desirable whenever point through rates are in effect, are again reiterated; and further, be it

Resolved—When joint through rates are in effect freight should be waybilled through from point of origin to final destination on the Association's Standard Forms of Waybill."

"Whereas, Both the carrier and the shipper will be benefited by co-operation in the adoption of methods to prevent duplicate collection of freight charges, and

Whereas, The cause of many errors will be removed if all prepaid shipping orders and bills of lading are distinctly stamped "Prepaid," and the total amount of prepayment shown in the space provided hereon, therefore be it

1—Resolved—It is the sense of this Association that its previous recommendations referred to be reaffirmed, and, further,

2—Resolved—That Traffic Associations are requested to impress upon their members the importance of preparing prepaid shipping orders and bills of lading in such manner that prepayment of freight charges shall be distinctly shown, and, further, be it

3—Resolved—That carriers should use the Association Standard Forms of waybill—the "Total to Collect" column, which is now shown on waybills used by some carriers, being the cause of many errors at delivering stations, and, further, be it

4—Resolved—That the Secretary of this Association send a copy of these resolutions to Mr. J. M. Belleville, Chairman, Freight Claims Committee of the National Industrial Traffic League, such resolutions conforming to conclusions reached at conference with Mr. Belleville in Pittsburgh, Pa., December 9th, 1914, and further, be it

5—Resolved—That a copy of these resolutions be also sent to Mr. Chas. A. Wickersham,

Chairman, General Managers' Association of the Southeast, which, together with copy of resolutions to be furnished him in connection with Twenty-third Subject, will cover the points raised in his communication."

These resolutions are extremely gratifying, as showing clearly that the carriers are honestly endeavoring to remove causes for complaints, and we would strongly urge upon our members the importance of co-operating with the carriers by seeing to it that prepaid shipping tickets and bills of lading are made out in so distinct a manner and the prepayment so emphasized as to minimize the possibility of error.

We offer the following resolution:

Resolved—That the National Industrial Traffic League heartily endorses the action of the Association of American Railway Accounting Officers at their meeting at Atlanta, Ga., April 28th, in recommending the extension of interline billing whenever joint through rates are in effect and we urge adoption of this recommendation by the carriers.

Respectfully submitted,
Freight Claims Committee,
J. M. Belleville, Chairman.

Upon motion, made and carried, the report of the committee with accompanying resolution was adopted.

Return of Freight Bills to Claimants After Adjustment of Claims

The committee submitted the following report:
The following letter addressed to Secretary Bell has been referred to this Committee for presentation at this meeting:

"I would suggest that at the meeting of the League to be held in Toledo, O., September 9th and 10th, that the matter of return of freight bills from freight claim agent's office should be discussed vigorously. An expense bill, as I understand it, is the property of the man that pays the freight. Now if it becomes necessary to submit this expense bill to the freight claim department in connection with a claim for overcharge, or for loss and damage, I consider it the duty of the railroad company to return this freight bill to the consignee, or the consignor, as the case may be, after the claim has been adjusted. In ninety-nine cases out of a hundred I find it necessary to write to the railroad companies, asking for the return of these bills after they have noted thereon the amount of refund or the particu-

lars regarding payment of claim. Even in cases where they do not pay claims they make a habit of retaining these freight bills in their files. It should not be necessary for us to continually request the railroads to return these papers and it is entirely out of reason for this chamber individually to accomplish this result for the good of all concerned, therefore, I respectfully request that you give this matter your careful consideration."

It is the understanding of your committee that when claims are presented which require the attachment of the original paid freight bill, it becomes, if the claim is paid, a necessary part of the carriers' record, and should be kept in their files. This is the first time it has ever been brought to our attention that freight claim agents have refused, when declining a claim, to return the papers contributed by claimant, including the paid freight bill.

We would appreciate very much information from our members as to their experience in this regard, and submit the question raised by our member in the above letter for discussion and action by the League.

Respectfully submitted,
Freight Claims Committee,
J. M. Belleville, Chairman.

In the discussion it was developed as the general experience of those present that as a rule carriers return to them all papers when claims are declined and that there has been very little difficulty along that line, also that when it is necessary to make a request for return of papers this is usually done very promptly and correspondence in such cases shows that failure to do so in the first place was simply due to oversight of the party handling the claim.

Upon motion, made and carried, the report of the committee was adopted, the views of the members being in harmony with that of the committee with respect to return of papers when a claim is paid.

Ludowici-Celadon Case Involving Refund of Overcharges Without Original Paid Freight Bill

The following report was submitted:

The attention of the League has been called to the decision of the Interstate Commerce Commission in case of Ludowici-Celadon Co. vs. Florida East Coast Railway Co., decided July 3rd, 1915, same being reported in the Traffic World, Aug. 7th, 1915. This is a case where the delivering

carrier refunded an overcharge of large amount to consignee without either requiring surrender of the original paid freight bill or execution of a bond.

Without intending any criticism of the decision of the Commission in this case, which was on strictly legal grounds, we believe that the carrier in this instance failed in his clear duty to the shipper and was morally responsible for the loss sustained by him. We submit the following resolution and move its adoption:

Whereas, The rules of the Freight Claim Association adopted and in force among practically all of the carriers provide that claims for overcharge must not be paid without the surrender of the original paid freight bill or in case of loss of same the furnishing of a good and sufficient bond, this being to save possible loss to the railroad company, therefore be it

Resolved, That the National Industrial Traffic League fully believe in the justice of the rule of the Freight Claim Association requiring that all claims for overcharge be supported by the original paid freight bill or in event of its loss the execution of a good and sufficient bond, and that the rule should apply as well to voluntary refund of overcharges discovered by the carrier as to claims for overcharges presented by either shipper or consignee and that when refunds are made without the safeguard above indicated the railroad does not fulfil its plain duty, and be it further

Resolved, That this question be taken up by the proper officers of the League with the carriers with a view to securing such action as will prevent the recurrence of similar cases.

Respectfully submitted,
Freight Claims Committee,
J. M. Belleville, Chairman.

Upon motion, made and carried, the report of the committee was adopted.

Upon motion, made and carried, the committee was further instructed to take this matter up with the Interstate Commerce Commission and endeavor to secure the adoption of a conference ruling to the effect that the Commission approves the practice of requiring the surrender of original expense bill before refunding overcharges. In the discussion of this motion it was pointed out that while there is in this action of the League no criticism of the decision by the Commission in the particular case which brings the matter up, and that this decision was undoubtedly in conformity with the law, nevertheless it would seem advisable to have

an expression from the Commission to the effect that the surrender of the freight bill ought to be required and thus avoid any understanding on the part of shippers or carriers that the Commission had any thought of approving as good practice the payment of claims without surrender of original paid freight bill.

Relations with National Association of Railway Commissioners

The Chairman of the Freight Claims Committee brought to the attention of the League a letter which he had received from the chairman of the corresponding committee of the National Association of Railway Commissioners inviting co-operation, this being in response to correspondence originating with the League.

The Assistant Secretary supplemented this report with a statement that favorable replies in this same direction had been received from the chairmen of other committees of that association.

The chairman of the special committee of the League on the subject of relations with this association suggested that it would be very desirable if this organization could be represented at the meeting of the National Association of Railway Commissioners to be held in San Francisco in October, in order that the two organizations might in some way get in closer touch with each other.

Upon motion, made and carried, it was decided that Mr. J. M. Belleville be authorized to attend this meeting of the association, as representing the National Industrial Traffic League, provided that the Finance Committee of the League could so arrange the matter of expenses for this trip with Mr. Belleville as to make this expenditure advisable in view of the finances of the organization.

(Arrangements have been made for Mr. Belleville to attend this meeting as the representative of the League.)

REPORT OF THE COMMITTEE ON TRANSPORTATION INSTRUMENTALITIES

The committee submitted the following report:

Free Interchange of Cars

Complying with resolution passed at the May meeting, we have communicated to the Interstate Commerce Commission the position of the League on the question of a freer interchange of

cars, sending the Commission also a copy of the committee's last report on that question.

At the May meeting of the American Railway Association the following resolution was adopted:

"Whereas, Empty cars are now being back-hauled in home route, creating much unnecessary per diem and transportation expense, thus creating a serious situation, and

Whereas, Under M. C. B. Rules bad order cars without repairs are being returned on defect cards regardless of home route, be it

Resolved, That a Committee of Twenty-five be appointed by the President, consisting of fifteen transportation officers and ten mechanical officers, representing various sections of the country, who shall meet with the Committee on Relations between Railroads and the Executive Committee of the Master Car Builders' Association, and develop some workable plan to minimize the movement of empty cars in good and bad order."

This committee was duly appointed and held its first meeting at Chicago on July 26th. Mr. Arthur Hale was made chairman of the committee. A number of suggestions were received and discussed. The committee adjourned, to meet again at the call of the chair for further consideration of the subject.

Master Car Builders' Rules Requiring Protection of Car Doors

Chairman Morris of the Central Freight Association advised that he was arranging a conference with us on this subject for August 26th, 1915, but as he was unable to secure the attendance of railroad officials the conference was postponed. Mr. Morris states there is some doubt whether this should be handled by the traffic department as the rules were adopted by the operating department, and it will be docketed for consideration at the next meeting of the Central Freight Association in October. We have advised him that it is our understanding no action will be taken by the carriers to change the present status of car door protection in tariff publications pending a conference with us.

Respectfully submitted,

Committee on Transportation Instrumentalities.

J. S. Marvin, Chairman,

The Chairman of the committee pointed out that this report was merely one of information as

to the status of these matters and that the committee required no further instructions.

Upon motion, made and carried, the report was received and filed.

REPORT OF ADVISORY COMMITTEE

The following report was submitted:

The membership of the League have already been advised by circular of the decisions of the Commission in I. & S. docket No. 535 involving tariffs proposing charges for spotting of cars and I. & S. docket No. 545 involving proposed charges for trap or ferry car service, in both of which cases the Commission has decided adversely to the carriers and ordered the cancellation of the tariffs under suspension.

The decisions in these cases substantiate the contentions made on behalf of the shipping public that these so-called free services have always been and are now included in the line haul rate, that to make an additional charge for same involves a radical departure from the present method of constructing freight rates in this country, that if such a system should in the future be deemed preferable to what now obtains, there must be a separation of the cost of the line haul from the cost of the terminal service, and a complete reconstruction of rates, that the shippers are furnishing facilities and performing services for the carriers which offset the advantages to the shipper that accrue from the performance of these services by the carriers, and that the proposed tariffs were so constructed as to create great discriminations.

Your committee appreciates the co-operation of the members of the League who took an active part in protesting these tariffs by furnishing data, appearing as witnesses, and contributing financially to the conduct of the cases. We believe we are justified in saying that the League through its representatives and attorneys took the leading part in presenting these cases to the Commission on behalf of the shipping public and that the successful outcome is due in large measure to this organized effort. Furthermore, considering the numerous hearings held in different parts of the country which covered a period of two months for the two cases, we believe it must be conceded that the greatest economy was secured by the organized way in which the cases were handled by the League.

Respectfully submitted,
Advisory Committee,
O. F. Bell, Chairman.

Upon motion, made and carried, the report was accepted and the committee discharged.

REPORT OF WEIGHING COMMITTEE

In connection with the efforts being made to secure the general adoption by all carriers of the National Code of Weighing Rules, your Weighing Committee has experienced special difficulty in certain sections of the country, with Section E, of Rule 3, reading as follows:

"When the actual tare of a car has been ascertained immediately before loading, it shall be used in lieu of the marked tare, except as provided in Section F."

Section F, of the rule, is similar to Section E, providing for use of the actual tare at destination when secured after car has been unloaded.

When this question of actual tare weight was under discussion in the joint conferences between the respective committees of the League and the American Railway Association, the representatives of the carriers were not in favor of any rule that would encourage the practice of weighing cars light to secure the actual tare weight and tend to discourage the use of the stenciled tare weight. The contention of the carriers being that under the regulations adopted by the American Railway Association for reweighing and restenciling of cars the differences between actual and stenciled weights would be practically eliminated. Your committee, however, contended that the general inaccuracy of stenciled tare weights, and the necessity for more correct net weights than can be obtained by using these stenciled tare weights, warranted it in insisting upon the recognition of such actual tare weight when ascertained.

Further, your committee also insisted that when the actual tare weight is ascertained before loading there should be no charge for such weighing. It was the view of the members of the committee that securing correct weights is just as much in the interest of the carrier as the shipper and that when the scale is located conveniently at the point of loading or unloading on the tracks of the shipper and the carrier is not obliged to switch cars to a distant railroad scale for weighing there is no service involved for which shipper should be required to pay.

Admitting that the carrier should not, as a practical matter, be required to weigh all cars light before loading, your committee was of the opinion that there was ample justification for requiring this weighing to be done without charge, under the conditions above referred to.

It was finally agreed to adopt the rule set forth above (Sec. E, Rule 3). This rule authorized the use of the actual tare weight when ascertained,

and read in connection with Sec. A, of Rule 9, which provides that no charge shall be made for weighing when weights are obtained for the assessment of freight charges, was understood by all concerned as providing that no charge should be made for weighing the car loaded or empty, or both.

The light weighing of cars at destination, after unloading, is covered by Sections B and C, of Rule 9, and by Rule 8, which provide that if such weighing does not result in correction of billed weight the weighing may be charged for. The application of these rules with respect to weighing the empty car at destination has been made more definite by the adoption of the following interpretation:

“Question: When a shipper or consignee requests that a car containing a commodity which from its inherent nature is not subject to shrinkage be reweighed and if such reweighing discloses no error in the billed weight of more than the tolerance but upon request the carrier weighs the car light and the result of such reweighing of the light car, taken into consideration with the result of the weighing of the loaded car, discloses error in the billed weight of more than the tolerance, shall a charge be made for reweighing either the loaded or empty car?”

“Answer: No.”

It now develops that certain carriers have published charges for weighing cars loaded and empty, providing as to the weighing of loaded cars that charge will not be made when weight ascertained is used for assessment of freight charges, but making no similar provision as to the weighing of empty cars. The result is that in certain sections of the country bills are being rendered for weighing the empty car, before loading, notwithstanding that the net weight thus ascertained is used for assessment of freight charges.

A circular has been addressed to the members of the League requesting statements as to variations between stenciled and actual tare weights and a conference has been requested with the committee of the American Railway Association to further consider this matter and obtain report from that association as to the result of its negotiations with the carriers concerned, the matter having already been considered at one joint conference between our respective committees. The statements so far received in response to our circular from members who have kept record of the variations referred to show that the expectation of the carriers has not been realized and substantiate our contention that the stenciled tare

weights are not any more reliable now than when the Interstate Commerce Commission made its investigation in the matter of alleged irregularities and discrepancies in the weighing of freight.

It is the intention of your committee to prosecute this matter to a definite conclusion in harmony with the code of rules as agreed to by the American Railway Association and approved by the Interstate Commerce Commission.

Respectfully submitted,

Weighing Committee,

O. F. Bell, Chairman.

In connection with this report the committee submitted the following resolution:

Whereas, Tariffs of carriers have been filed with the Interstate Commerce Commission which do not conform to the code of rules regarding weighing agreed to by the Weighing Committees of the National Industrial Traffic League and the American Railway Association and approved by the Interstate Commerce Commission, and

Whereas, Certain groups of shippers have had conferences with the carriers publishing such tariffs, and

Whereas, Such carriers believe that their tariffs do conform to the code of rules stated above,

Therefore Be It Resolved, That the Weighing Committee of the National Industrial Traffic League be instructed to continue conferences with the American Railway Association with the view of having all carriers publish weighing tariffs in accord with the agreement of the Weighing Committees of the National Industrial Traffic League and the American Railway Association, and the Weighing Committee of the National Industrial Traffic League is further instructed if in its judgment it is deemed necessary, and with the approval of the Executive Committee, to ask the Interstate Commerce Commission to reopen the weighing case for final settlement.

Upon motion, made and carried, the report of the committee and the resolution were adopted.

RESOLUTION OF THANKS

Upon motion, made and unanimously carried, the League expressed its thanks and appreciation to the Toledo Commerce club, the Transportation club of Toledo, and the committee who had made the arrangements for the meeting, also to

the Toledo club for its kind entertainment of the guests of the League.

Upon motion, made and carried, the meeting adjourned at 12:30 P. M.

Afternoon Session

The afternoon was devoted to an automobile trip around the city at the courtesy of members of the Rotary club and other citizens of Toledo.

ADDRESS BY MR. FRANK L. MULHOLLAND

Mr. Mulholland: Mr. President and Members of the Traffic League: I sincerely hope that you are not as frightened just at this moment as I am (laughter). I assert with great candor that it does frighten me to look into the faces of so many men who know so much more, at least upon one subject, than I happen to know. A very short time ago I was invited to speak before the Transportation club of this city. I prepared what I thought was a very exhaustive address upon a very wonderful subject and delivered it with a great deal of satisfaction to myself. When I had finished a few of the fellows backed me up in the corner and advised me that I didn't know anything about what I had talked about (laughter).

Yes, I am frightened, but possibly not so much so as a case I heard of out here in the West End of our city. There was a burglary one night and it happened that the father was sleeping with his small son. In the course of the night the boy wakened his father, and he says: "Pa! Pa!" "What do you want?" He says: "There's a man in this room!" "Oh, go to sleep, you little fool, there is nobody here to bother you." Pretty soon the boy said again: "Pa, Pa, I tell you there's a burglar in this room." "Go to sleep and behave yourself. There is nobody here to bother you." Just then a gruff voice said: "Get your head under the clothes there. Duck quick or I'll fill you full of holes!" They ducked under and could hear this man working there. Finally the edge of the quilts opened and the little boy's mouth came out and he said: "Mister Burglar, Mister Burglar, can't I just put my nose out? Pa's scared worse'n you think" (laughter).

You know, I am always promising to do something and then sorry afterwards that I promised to do it. It reminds me of a fellow who used to go to college up at Albion, Mich., where I attended school at one time. He wasn't a very bright fellow and his father thought he would make him a preacher, so he sent him up there

to the Methodist college and the fellow spent four years and finally graduated, joined the Methodist Conference, and they sent him up into one of the northwestern districts. You know, they always called those districts "lean districts" because they didn't pay their preachers very much. But this gentleman went around doing good. He picked up the fellows who had fallen and comforted those in distress, and all over that great territory the people learned to love him. Along in the spring time, when the trees were taking on their leaves and the birds were singing their songs, the hearts of the people began to warm towards Preacher John and they thought they ought to do something to show their appreciation for the great work he had done among them. So they appointed a committee to go around over the district and raise money to make him a present. They raised \$7.68. Then the committee came together to decide what they ought to buy the preacher, and they finally decided what he needed more than anything else was a horse. Then the committee started out over the country to find a horse they could buy for \$7.68. Well, they found the horse and one afternoon, with great ceremony, presented the horse to Preacher John. Preacher John, desiring to visit his father, who lived down in the center of the state, started out on the horse, and after four days of patient labor drove into his father's barnyard. The old man came out to greet his son but stopped at sight of the horse. It was an awful looking horse. Had great long ears and one was cocked forward and the other aft; three spavins and two ring bones, and was so thin you could hang your hat on him anywhere. He had just a little stub of a tail and every time his heart would beat his tail would jerk. After looking the horse over for a little bit, the father said: "John, this is an awful horse you are riding on." Says John: "Oh, but that is a better horse than the Lord rode into Jerusalem on." The old man ran over and opened the mouth of the horse, examined his teeth and said: "My boy, it is the same beast!" (laughter).

I had prepared an elaborate talk for you but my heart was put at ease when my good friend to my right said a moment ago: "Gosline isn't here tonight and I hope you will say a few words of welcome." Why, my friends, the easiest task in all the world is to welcome delegations to the city of Toledo. Any man can stand upon his feet and express the cordial good will and the hospitality of the people of our great city, and it is a real pleasure to look you in the face and say: "You are welcome to Toledo." And, by the way, it is some town that bids you welcome tonight. We don't boast much of our town,—

oh, no! Of course we have several great cities in Ohio, two in particular, two of about the same size. I refer to Columbus and Toledo, two towns that have been racing along here side by side, and, by the way, some rivalry has been developed between these two towns. Of course we do not play baseball with them any more, but we have a scrub team that is going to beat them out here at the ball park tomorrow afternoon. Two splendid cities, growing along here year after year, about equal in population, Toledo always a little ways ahead. And down in Columbus you hear them say: "Oh yes, you boost up at Toledo, but you spell it b-o-a-s-t, boost." We have in this town a Commerce club of 4,000 members, with a budget of \$100,000, and one of our greatest assets is your president, this splendid man of our Traffic Bureau, "Horace Greeley" Wilson (applause). The Bureau and the 4,000 members of our Commerce club extend to you a cordial welcome. A short time ago I went down to Columbus to speak before one of their commercial bodies and in introducing me the chairman paid some attention to this rivalry that has existed between Columbus and Toledo. He paid a great tribute to Toledo. "Why," said he, "nestled up there against the shores of old Lake Erie, a magnificent city is Toledo. But," he says, "she ought to grow. With all the opportunities of interlake and inter-oceanic transportation—she ought to grow. But look at Columbus, this splendid city of the inland; give us Lake Erie and we would be the most populous city in Ohio in six months. I introduce Mr. Mulholland as the speaker."

I arose somewhat flabbergasted, but remembering an old story, I said: "Mr. President, I thank you for the splendid tribute you have paid us, and, by the way, if you only had this splendid city of Columbus connected with Lake Erie by a half-inch pipe and you were as good a sucker as you are a blower, you would have the lake down here in less than the six months you talk about" (laughter).

You may have heard that our fair city has been called the Golden Rule town. But don't get the idea that we are engaged all the time looking for four-leaved clovers. Toledo is a very practical town. We have here some splendid industries. We have the largest wagon works in the country, the largest automobile plant in the land, located in one city. We have the largest glass factory in the world. Here we make the Overland automobile, the Milburn wagon, Ford's plate glass, Libby cut glass, Owen bottle machines and other products too many to mention here. Toledo is a town of industries—of varied industries. Her people find happiness in these industries. And so the town that welcomes you

tonight is a great industrial center. But I think over and above all of that is the great spirit of Toledo, probably brought about by the activity of our Commerce club. Here you will find more real good fellowship in commerce than you will find in almost any other town in the country. We somehow believe that "that song is the sweetest, bravest, best, that plucks the thistle barb of care from a despondent brother's breast and plants the sprig of heartsease there." This town of Toledo has laid hold of the modern conception of good fellowship, and, do you know, that spirit of good fellowship says to me: "If you meet a man in woe, walk right up and say hello. Say hello and howd' you do? How's the world using you? Slap the fellow on the back, bring your hand down with a whack; waltz right up, don't go slow. Grin and shake and say hello. When big vessels meet, they say, they salute and steam away, just the same as you and me, lonesome ships upon life's sea, each one sailing his own jog for the port beyond the fog. Let your speaking trumpet blow, lift your horn and yell hello. Say hello and hody'do, other folks are good as you, and when you leave this house of clay, wandering in that far away, when you're a traveler in that strange land on the other side of the range, then the souls you have cheered will know who you be, and say hello."

And so the city of Toledo welcomes you. Our commercial interests welcome you. Our great industrial concerns welcome you. Our splendid organizations of men who have grasped the ideals of good fellowship welcome you and over and above all we welcome you as men who are engaged in a splendid task, attempting as we believe to personify in your own lives the new spirit in commercialism.

I picked up the other day a little verse that will express to you my final thought: "The New Ideal in Commerce:"

"I come no more in grey disguise,
With grasping hands and greedy eyes,
Living upon larceny and lies.

No longer do my mighty hosts
Of ministers and servants boast,
Of giving least and taking most.

And now with eyes greed cannot blind,
With open heart and willing hand,
I live in service to mankind."

And so in the name of that new spirit in commerce—service—we bid you welcome as fellow workers to the fair city of Toledo (applause).

ADDRESS ON "THE NEW JURISPRUDENCE" BY MR. FRANCIS B. JAMES

Mr. Toastmaster and Gentlemen: Whenever I attend a meeting of the National Industrial Traffic League I take, among a large number of other things, a huge piece of pie a la mode for lunch, with the result that it is necessary for me to take a nap. I made no exception today. My nap today was accompanied as it always has been in the past by a dream; and in that dream I have always thought I was dead; and in my dreams I have always gone to heaven, and, until today I have always met Mr. Frank B. Montgomery there.

Mr. Mulholland in his eloquent speech of welcome said that whenever the spirit leaves the body of a Toledoian he greets the masters of the next world with a loud, jolly "Hello!" So when in my dream I went to heaven I said "Hello, Peter," and he said, "James, I will show you around." As we traveled over the celestial roads we came to a large bunch of good looking male angels, and I asked Peter, "Who constitutes that bunch?" and he said, "That's a bunch of Toledoians." I asked Peter, "What are they doing with balls and chains around their ankles?" "Why," he said, "those are Toledoians, and if I took off the balls and chains they would go back to Toledo."

I feel that way myself about Toledo. I have been in Toledo many times, and I like to go back there because it is a great metropolis, famed for its art, industry and commerce and for its bounteous hospitality.

This morning, as I was sitting quietly and listening to the proceedings of the League, your distinguished president, Mr. Wilson, sent down a little note asking me to make a talk tonight and select my own subject. I accepted on the condition that the talk should be quite short.

I have selected the subject the "New Jurisprudence" as expressing some thoughts which have crowded themselves into my mind in the speeding of time—thoughts to which I have never, heretofore, had occasion to give expression.

The realization must have come to all of you, as it has come to me, with the startling rapidity of lightning, that we have entered into a new social order and into a new economic era and there has been a passage of much of the old social order and the old economic era. As there was an old jurisprudence to preserve the rights and remedy the wrongs of the old social order and the old economic era so there has come about a new juris-

prudence to preserve the rights and remedy the wrongs not only of the old social order and the old economic era, but also of the new social order and the new economic era, replacing in part and supplementing in large measure the old jurisprudence and particularly in providing new remedies and instituting new tribunals of justice with large and ample remedial powers.

The old social order centered about individual rights and subordinated the rights of the community to the rights of the individual. In the old economic era the production and distribution of wealth centered around the individual who engaged in commercial rivalry, strife and competition more or less in disregard of the rights and welfare of the community.

The old jurisprudence was built up upon the predominant and underlying principle of individual rights; it recognized in its laws individual rights of the individual member of society; the rights of the community were subordinated and submerged in the rights of the individual. The old jurisprudence gave no adequate remedies for the enforcement of the collective rights of the community.

With the passing of the old social order and the old economic era and the coming of the new social order and the new economic era the rights of the community are being made at least equal to the rights of the individual and the rights of the individual are being worked out through the collective rights of the community and new remedies are being provided for the enforcement of the community rights and thereby of the individual rights which remedies did not exist under the old jurisprudence.

It was a truism of the old jurisprudence that wherever there was a right there was a remedy but dear-bought experience showed that while the law recognized the rights of individuals, the remedies provided by the old jurisprudence were inadequate to rectify the wrongs suffered by individuals. This defect of remedial jurisprudence under the old jurisprudence was sought to be met in England by an appeal to the "Conscience of the King," wherein the suitor prayed an adequate remedy in lieu of the inadequate remedy provided by law. The King referred the suitor to his Chancellor and thereupon grew up an equity jurisprudence wherein the Chancellor sitting as a court of equity sought to give an adequate remedy in lieu of the inadequate remedies provided under the strict rules of law. The Chancellor, however, did not seek to give new rights under the law, but merely to mete out to the individual a more adequate remedy for the rectification of his individual wrongs. But all this was during the

period of the growth of individualism wherein it was aimed to vindicate individual rights and remedy individual wrongs but not to vindicate the individual through the community or to remedy the rights of the individual through community rights.

Under the old social order and the old economic era as well as under the new social order and the new economic era, a rate charged and collected by a common carrier of freight should be just and reasonable. Under the old economic order a shipper aggrieved by an unjust and unreasonable rate was compelled to sue at law with trial by jury and judgment by the court that the rate paid by him in the past was unjust and unreasonable and the remedy was merely the collection of damages, if, by any possibility there was any practical way of proving his case, the burden of proof so to do resting on him. Each shipment was a separate transaction pertaining to the past and not to the future. The machinery of justice was inadequate, the remedy was purely as of the past and did not pertain to the future.

Under the old jurisprudence the right to a just and reasonable rate was just as emphatically declared by the law as it is today, but the machinery of justice was unfitted to ascertain the right and the remedies inadequate to rectify the wrong.

The shipper's right was, in fact, the community's right; his wrongs were not so much of the past as of the future.

The new jurisprudence regards a just and reasonable rate not merely as an individual right to be vindicated by the individual, but a community right to be vindicated by the community, not for one individual but for all the individuals of the community, and, at least in interstate commerce and in most of the States, the laws have deprived the courts of their old jurisdiction under the old jurisprudence of passing on the questions of fact involved and remitted it to a Commission which is a new tribunal of justice, under the new jurisprudence, with new machinery, and new and adequate remedies to deal not merely with the past but with the future for the whole community affected and not merely for one member of that community.

Under the old economic era individuals carried on business. Then there were evolved simple forms of business organizations such as partnerships, limited partnerships and limited partnership associations, wherein a restricted number of men joined hands in a common enterprise. Business organizations became more complex in the form of corporations with their stockholders and bondholders. The industrial corporation became

even more complex with its common stock, preferred stock, deferred stock, debentures, bonds, long-time notes and short-time notes, interlocking directors and chairmen of boards of directors. These corporations gave great impetus to the new collectivism wherein the rights of the many individuals were merged in and asserted through the rights of the collective body. With these new complex organizations came trust agreements, and unreasonable restraint of trade, unfair methods of competition and monopoly of trade and business. The world did not realize that the old economic era of individualism had passed and that a new economic era was upon us. To the new evils and wrongs under the new economic era, legislative bodies sought to apply the old remedies for the rectification of the rights of individualism under the old economic era, such as the Sherman Anti-Trust Law with drastic criminal prosecutions in the hands of the Department of Justice and theoretical triple damages to the individual for past damages and inadequate injunction remedies for future wrongs, with no machinery for the enforcement of rights and inadequate remedies for the redress of wrongs.

Just as the new jurisprudence gave birth to the Interstate Commerce Commission and the various State Commissions for the redress of the rights of the individuals through community rights so has the law now provided the Federal Trade Commission as a new tribunal under the new jurisprudence with machinery for the ascertainment of the rights of the community and more adequate remedies for the correction of the wrongs of the community and thereby of the wrongs suffered by the individuals constituting the community.

Under the old social order the workman was regarded as a part of the industrial machine, and if stricken down in the course of his employment, he or his survivors, both probably in need of immediate relief, were driven to a suit at law with its costs, delays and frequent denials of justice.

Under the new social order injuries to workmen are regarded as part of the cost of production, and the community has a deep and lasting interest in the care of the injured workman, and in the case of his death, in the survivors who were dependent upon him. The old economic order and the old jurisprudence made no adequate provision to care for the situation and the old jurisprudence furnished no adequate remedies for the carrying out of the new economic order. The new jurisprudence has created new remedies and new tribunals in the form of Workmen Compensation Commissions or Workmen Compensation

Boards to levy a just and equitable contribution on all industry and to distribute the same equitably to the injured workingman or dependents without cost, without delay and without denial.

Under the old economic order the government left six thousand national banks as six thousand separate units to work out their individual salvation in times of financial distress and panic and when commerce most needed the gold in their vaults, to keep the industrial and commercial wheels going, it was locked up because of the lack of any central or co-ordinated force or power to equalize conditions.

The new economic order recognizes that each national bank cannot and ought not to be a Caesar to itself, but that the welfare of the individual bank and of the customers who are dependent upon it must be worked out through a community of interests and action of all the national banks. The law has substituted for the old economic order of purely individual action of purely national banks, collective action through a Federal Reserve Board and the new jurisprudence has furnished a guide to the Federal Reserve Board and put in its hands remedies of prevention and aid in lieu of remedies of liquidation and bankruptcy under the old jurisprudence.

Magna Charta declared that justice should neither be sold, delayed nor denied. History tells us and experience teaches us that court costs only too often measure the price of justice; that delay of justice is much worse and more costly than its denial; that justice has too often been in fact denied by the inadequacy of the remedies provided.

We do know that under the new jurisprudence the cost of administering the collective rights is less per individual affected than the vindication of individual rights alone under the old jurisprudence. We do know that justice is administered more swiftly. We do know that there are fewer cases of denial of justice because of the more adequate remedies given under the new jurisprudence.

I am not here to discuss the wisdom or unwisdom of the new social order or the new economic era. I am not here to decry the courts but to uphold and sustain the courts because under the new jurisprudence justice must still be administered according to law and the new tribunals administering the new remedies under the new jurisprudence must conduct their affairs within the law and the constitution, and the courts must supervise their orders, whether affirmative or negative, to see that justice is administered according to the law and the constitution. I do say, how-

ever, with most solemn conviction, that the new jurisprudence has most admirably supplemented, without destroying, the old jurisprudence by providing in addition to the old remedies new remedies more adequate and more complete and more certain and more swift than the old jurisprudence.

Now that we are in the midst of the new social order and the new economic era, let us uphold the hands of those who are members of the new tribunals of justice instituted to enforce the rights of the individual through the rights of the community. The new jurisprudence has been vindicated through the workings of the Interstate Commerce Commission. This body has now been in existence for nearly thirty years, and there never has been a breath of scandal in reference to it or its members collectively or individually. It has grown in strength, efficiency and usefulness as Congress has, from time to time, increased its powers, and it now enjoys the respect of the people of the United States from one end of the land to the other.

It still needs the aid and support of the American people who should see that Congress makes an appropriation to give the Commission a building adequate for its work. Congress should not be sparing in its appropriations, but should give it sufficient funds so that it can collect about it a body of young men as examiners with compensation sufficient to hold them to the Commission and to secure for this service men who in time will, in the quality and character of their work, become peers of the members of the Commission themselves.

Great men have been members of the Interstate Commerce Commission since its creation—men who by their endeavors in its early history demonstrated that human justice could be administered through such a tribunal. We should remember the names of such men as Cooley and Walker; McDill and Veazey; Shoonmaker and Bragg; Morrison and Marble; and Yoemans, Calhoun and Fifer, who have gone, and we should keep green their memories and enshrine their good works in our hearts.

Of the living members and ex-members of the Commission, it might be indelicate to pronounce the unbounded praise to which they are entitled, but I feel that I can safely state, and I know it will meet the approval of everybody here, that there is no administrative tribunal in the world, which has done and is doing its work more honestly, more efficiently and more to the satisfaction of practically everybody in this broad land than the Interstate Commerce Commission of the United States of America (applause).

ADDRESS BY HON. EDGAR E. CLARK

Mr. Clark: I utter no platitude when I say that it is a real pleasure to me to again meet the members of the National Industrial Traffic League. I believe in the purposes of the League, as I understand them; I believe in intelligent study and discussion of the problems to which you direct your attention; I believe that your purpose is to find a right solution of each of those problems; I have an abiding faith that your efforts will contribute much to such solutions; and beside all that, I have always enjoyed meeting your association or its individual members. I have enjoyed meetings with your members when there were but three or four gathered together.

In some quarters the tribunal of which I happen to be a member is accused of entertaining, and of exercising, a spirit of hostility toward the railroads. If a railroad whose financial history has been little, if anything, less than a public scandal from a time that antedates the enactment of the act to regulate commerce goes into the hands of a receiver, certain publications solemnly announce that it has been forced into bankruptcy through the hostile and unreasonable policy and actions of the Interstate Commerce Commission. If the Commission finds that certain proposed increased rates are reasonable, those same writers sneeringly assert that it is a delayed and reluctant granting of but a small part of that which should be granted to the railroads. If the members of the Commission disagree as to the propriety of, and justification for, the proposed increased rates, they assail those members who disapprove and laud those who approve. Thus if a Commissioner happens to be on one side in one case and on the other side in another case he is both approved and disapproved.

From another quarter we are accused of being desirous of doing only those things that the railroads wish us to do; and the assertions and accusations from that quarter are as extreme and as violent as those emanating from the quarters first mentioned.

And so, dependent upon the point of view, we are different beings, animated by different impulses and doing things which are diametrically opposed to each other. But is the one who will not see more than one side of a question, who attributes dishonesty to every one who does not see as he does, and as narrowly as he does, necessarily the only one who sees rightly? Is his point of view infallible? May not some of his conclusions or deductions be wrong?

I remember reading when a boy a poem which described the trip of six blind men of Hindustan to see an elephant. The first approached the animal and happening to fall against its side exclaimed, "Why, bless me, but the elephant is very like a wall." Another chanced to grasp the elephant's tusk and asserted that the beast was like a spear. The one who came in contact with the elephant's ear declared that the animal was like a fan; the one who grasped the elephant's tail was sure that the elephant was much like a snake; the one who laid hold upon the elephant's trunk was certain that the animal resembled nothing but a tree, etc.

"And so these men of Hindustan
Disputed long and loud,
Each in his own opinion
Exceeding firm and strong,
Though each was partly in the right
And each was in the wrong."

Every nation or people has a national sport, pastime or game. I have long known that in the United States we had two national games. The first is played in small parties, and generally in private. Of that one I will only remark that no one cares to play with the man who continually grumbles because he cannot win every pot. The second, baseball, is played in public; the crowd is always with the home team, and many of the onlookers find their greatest enjoyment in roasting the umpire. Of late I have been almost inclined to think that a third pastime—finding fault with the Interstate Commerce Commission—is becoming so popular as to be almost national, and I am disposed to pattern after the manager of a Texas baseball team, who appealed to the crowd, "Don't shoot the umpire, he is doing the best he can."

But when I receive an invitation to a dinner of this League, feel the cordial grasps of your hands, see the welcome in your eyes and in your actions, and experience the thrill of the reception which you have accorded to me, I feel really respectable. It makes me feel that life is worth living, just as I felt one day recently when I was under an automobile and my little girl, 2½ years old, who was playing on the grass nearby, said: "Daddy, you're a good old scout."

But, seriously, gentlemen, the questions which you gather together to discuss, and with which you deal, are parts of a problem of tremendous importance. Transportation is the very life blood of the commerce of the nation. The railroad industry of this country is probably, with the exception of agriculture, the greatest of our in-

dustries. Efficient and adequate railroads are essential to the maintenance and expansion of our commerce. Under our plan of private ownership, railroads have been, are, and will be built only when those who promote and further the enterprise have faith that in due time it will be profitable. Excepting the lands which were granted to some roads, a railroad has only transportation to sell and no other source of revenue. The railroad company, created by public grant of franchise, is obliged to assume certain obligations, among them the regulation by public authority of many of its affairs, and is given certain privileges and guarantees, among them the right of eminent domain and protection against confiscation of its property through regulation or other means.

It must submit to regulation because otherwise, as has been amply demonstrated, unjust discrimination, undue preferences and unreasonable rates would be indulged in and imposed, and commerce, instead of flowing in natural channels, would thrive or languish according to the will of those who possessed the transportation facilities. Business, manufacturing, producing and marketing would all be subject to artificial domination and control. It must be accorded the right of eminent domain, as, otherwise, spite and greed would throw insuperable obstacles in the way of its construction. It must be protected against confiscation because it is, after all, private property which the public has no right to use except upon the payment of reasonable compensation.

I do not doubt, and I have never doubted the willingness, of the great majority of the people to pay reasonable compensation for reasonable and proper service. I do not doubt the willingness of the great majority of those who manage the affairs of our railroads in these days to furnish good service in return for reasonable compensation. The difficulty comes in the difference of opinion as to what is reasonable compensation, either as a whole from all of the traffic, or in individual instances. These differences are often so acute that they must be decided by some disinterested, impartial tribunal, and manifestly they should be heard in an open forum in which all parties' rights are respected and protected.

Under our form of government these questions, in so far as they do not involve confiscation of the carriers' property, are within the jurisdiction of the Legislative branch of the Government. Acting within its lawful powers, the Congress has delegated certain authority to a body created for the purpose of deciding controverted questions of unreasonable, unjustly discriminatory

or unduly preferential rates, rules, regulations or practices. That body, like the Texas umpire, is doing the best it can. I do not mean that it is doing the best it can to please everybody. It does not aspire to accomplish the impossible. It is doing the best it can to discover and establish that which is right, reasonable and just. It stands with its face to every wind that blows, decides the questions that come to it in a judicial spirit, endeavors to be helpful when it can in promoting harmony and thorough understandings between the carriers and their patrons, and does not worry about whether or not its decision or action is going to be popular.

And right here I wish to say that one prime reason why I am glad to be with you tonight is the fact that your League as a League, and your individual members have given abundant evidence of a spirit of fair-mindedness in these matters. Your position has been frank and open. You have consistently supported and urged your interests and your convictions, and when, as has sometimes occurred, your views have not prevailed, you have acted like an honorable contestant and have not accused those who decided against you of being dishonest or corrupt.

The act to regulate commerce has been on the statute books since 1887, but it can fairly be said that real regulation under it dates back only to 1906 when by amendment the act was given vitality. The problem was not then, and is not now, to devise a model system of rates and regulations for railroads not yet built, or for industries and communities not yet located or developed. The conditions of trade and transportation that had grown up in a rapidly developing country served by railroads that had always been operated as private industries, free from governmental control, each going its own way in accord with the policy or ideas of those who for the moment were in control of it, had to be dealt with.

I think the court was perfectly right when it said that the purpose of the act was to promote and not to hamper trade and commerce. We may see situations and conditions which are wrong and which apparently should be corrected. But if, upon thorough investigation, it is demonstrated that in order to correct them other situations equally as bad, or worse, will be created, no real progress is made by forcing such action. The conditions which the law was enacted to correct or overcome did not grow up in a day and they cannot be corrected or overcome in a day without doing inestimable and irreparable injury. The evils at which the law is aimed were not created by one party to the transactions. No railroad official ever paid a rebate except to some receptive

shipper. The ideal situation cannot be attained except through general disposition and desire on part of both railroad officials and shippers to support and observe the principles which form the foundation and cornerstone of the law. Just such associations as yours and the various traffic clubs of the country assist in getting men to think alike, and when they think alike, there is little trouble about getting them to act alike. The solution of these profoundly important and far-reaching problems must be approached and dealt with in a broad way. The foundation must be laid in sound principles of right. If a railway company imposes wrongs upon, or deals in bad faith with an individual or a community, its owners may expect hostility against the company and its interests. If a shipper defrauds or attempts to defraud the railway company by falsifying as to his shipments or his claims he cannot expect its officers to attach much importance to his representations in a matter that is of real importance to him, and in which his contentions are right. Every temporary or transient advantage that is secured by trickery or by evasion of truth and right retards the progress toward the conditions which we all should seek to enthrone.

The law provides that the patron of the railway shall be accorded reasonable and nondiscriminatory rates and service. If he has been charged an unreasonable rate or has been damaged by an unlawful discrimination he may recover reparation. If the railway maintains an unreasonably low rate it cannot repair losses sustained as a reason thereof on past transactions. If the railway maintains unreasonably low rates as to some traffic or as to some communities, it may not recoup itself by laying unreasonably high charges against other traffic or other communities. This principle has been well established in recent decisions of the courts.

And this leads to the query, what is a reasonable rate? There is no statutory definition of it. No scales or yard sticks are provided by which it can be weighed or measured. It cannot be determined solely by the cost of the service, because that cost, plus a reasonable profit, might, as to some commodities, be prohibitive. It cannot be measured alone by the value of the service, because that would open the way for the railway to absorb, as to some traffic, the profits that legitimately belong to the shipper. It cannot be ascertained from a consideration of distance only, because so to do would destroy competition between producing fields and in common markets. In the last analysis it is a question of judgment, and, very properly, the judgment that finally controls is that of a disinterested, impartial tribunal, whose decisions must be made only in the light

of full hearings and proper investigations, and are, as to matters of law, reviewable in the courts.

If time would permit, it would be interesting to trace the decisions of the court of last resort by which some of the more important and more strongly controverted questions in these connections have been set at rest, but you are all familiar with them. Some questions, however, which to my mind are of fundamental importance, remain to be decided by the Commission and the courts, or to be disposed of by the Congress.

As I have suggested, the laws guarantee the owners of the railways against confiscation of their properties. What constitutes confiscation? What is the reasonable profit which the railway may lawfully demand? Upon what property may that profit be based? I think that the courts have clearly laid down the principle that the carrier is entitled to earn a reasonable return upon the property that is devoted to the public use, as of the time of its use. Now come the questions, What is the value of the property, and how is it to be determined? Certainly not by figuring a return upon the outstanding bonds and stocks. Two railroads may have been built in a common territory, under substantially similar conditions, at approximately the same time, and should have cost approximately the same per mile. Throughout its construction and operation one of them may have been conservatively managed and financed as a straight-out business venture, while the other one may have been the prey of graft during construction and of plunder under operation. The capitalization of the one may represent actual investment and outlays, while that of the other may represent all the money that those in control of its affairs have been able to borrow, or to raise by the sale, at ruinous rates of discount and interest, of securities far in excess of the cost or value of the property, or of stocks that can never have any value.

Being in common and competitive territory, their rates must, under the law of competition, be the same. Will anyone say that the capitalization of these properties forms any reasonable basis for determining what they may properly earn from serving the public?

Within a period of two or three years in proceedings before the Commission and the courts, one railway company proved by witnesses several different valuations of its property, and the differences in those valuations exceeded one hundred million dollars. The item of interest during construction was variously shown in sums which differed so widely that it seemed obvious they were not taken from any records which were considered reliable or permanent.

Such experiences as this led to the conviction that an official and dependable valuation of the railway properties should be had, and by authority of the Congress that work has been undertaken. The law which was adopted for this purpose is exhaustive and requires the performance of a vast amount of detail work and the determination of many vexed and vastly important questions. No one has blazed the path. The results ought to be sound, equitable and right. When these valuations are finally fixed they will be of great assistance to the Commission and to the courts in connection with cases which involve alleged confiscation of property of carriers. It will not be possible for each railroad to earn the same return upon the value of its property, because controlling competition in transportation and in commercial life will require substantially equal charges in competitive territories, and we have so many railroads and such a vast commerce that there is not much territory that is not competitive.

There are those who think that if the railroads in a particular section of the country can, as a whole, show that their net return from operation is unusually or unduly low they should all be permitted to increase their charges on all of the traffic or upon important parts thereof. If all of those roads had been constructed, financed and operated on business principles and as business concerns, and the net results of their operation showed an improperly low return, I would find no difficulty in accepting the view that they were justly entitled to such increases in their charges as would render their operation properly profitable. But in such a case the tribunal that authorized such an increase should have the power to also fix the minimum rate, so that the burden might not be inequitably distributed. The carrier has a right to fair compensation for each service performed by it, and for its services as a whole. The public should pay such compensation. The carrier is entitled to earn a profit from legitimate enterprise and effort, but when it comes to increasing rates in general or upon an important part of the traffic, I find difficulty in accepting the theory that because certain roads are in financial straits, all roads in that section may properly increase their rates, when the greater number of those roads have for a series of years been able, under existing rates, to maintain their properties in splendid condition, pay all fixed charges and taxes, declare each year handsome dividends upon their stocks, and carry rather liberal sums to their surplus accounts.

I do not wish to draw invidious comparisons, but I want to make this point clear. I do not attempt to analyze the reasons for the conditions to which I refer as to some carriers, and I refer

only to matters that are public property and common knowledge. The Burlington and the Rock Island systems are very generally strongly competing systems. They have operated in common territory and largely under common scales of rates. The one has maintained in good condition a splendid transportation system, has a strong and healthy financial standing, and has regularly paid fair, if not liberal, dividends to its stockholders. The financial condition of the other, and, in general, the reasons therefor, you all know.

And so I say that, while desirous of according that which is right to the carriers as much as to the shippers, one may well hesitate about assuming responsibility for approving large increases in rates for the purpose of relieving a financial strain that is composed of the average of the necessities of such roads as the Burlington, the North Western, the Union Pacific, the Great Northern, the Northern Pacific, and the Santa Fe on the one hand, and the Frisco, the Rock Island, the Alton, the Wabash, the Great Western, and the Missouri Pacific on the other hand.

The Commission has consistently declined to prescribe rates based alone upon the favorable conditions obtaining as to the short line and the strongest, richest carrier. It should, of course, decline to approve rates based only upon the conditions and needs obtaining upon the line of the carrier that is poorest and that has an unfortunately located line.

I have traveled some upon the railroads of Europe. They have some roads which, for those countries and for the services demanded from them, are excellent, well equipped transportation agencies, which perform an acceptable service. They would not, however, be able to meet the demands in our country. Taking into consideration circumstances and conditions, I think that we have the best railroad service in the world. There are many improvements that might be made, and some that ought to be made, but in general it is good and efficient.

The latest figures available show that the charge for the transportation of freight is much lower per ton-mile in the United States than it is in other countries. Glancing over comparative figures for recent years, we find that the ton-mile revenue in various countries is: United Kingdom of Great Britain, 2.39 cents; Germany, 1.37 cents; France, 1.3 cents; Austria, 1.45 cents; Norway, 1.6 cents; Belgium, 1.14 cents; Switzerland, 2.92 cents; New South Wales, 1.76 cents; and South Australia, 1.94 cents; while for the United States it was in 1913, 7.29 mills.

These figures, however, do not tell all the story. Referring to other figures, we find that the railroads of the United States move 2,737 tons of freight one mile per capita per annum, while in Germany, where the movement by rail is heavier than in other European countries, the railroads move only 582 tons one mile per capita per annum. I believe it has been recognized by successful business men that a large volume of business with a small profit on each transaction is more desirable than a small volume and larger profits on each deal.

The railroads of Europe are capitalized much more heavily than are those of the United States. They are much more completely equipped with signal and other safety devices than are our roads, and generally their roadbed and stations are more expensively constructed and with a view to more permanency.

In many of those countries the railroads are largely or wholly owned and operated by the governments. But, on the whole, such ownership and operation has not proven entirely satisfactory, and it certainly has not afforded the people cheaper transportation than could have been furnished under private ownership, properly regulated.

We have 250,000 miles of railroad, serving a broad territory, in much of which the commerce and traffic is heavy, and in all of which the commerce and traffic is growing rapidly. We hear much about inducements to build new roads. In my judgment, what is needed is not so much the building of new roads, but the development of those that are already built, so as to make of each an efficient agency, properly equipped with terminals and rolling stock, all maintained in such condition as to afford prompt, dependable and safe service.

If the public demands such roads it must be willing to pay reasonable prices for the services performed by them. If the railroads desire to have and to operate with profit such roads they must convince the public that they are, and are to be, operated along business lines and at rates that fairly compensate for the service performed and yield a fair profit upon the value of the property which is devoted to the public use.

Both the railroads and the public must contribute to the effort to bring about this nearly ideal condition. Each, while guarding its own rights and interests with appropriate jealousy and zeal, must recognize and respect the rights of the other. But even when that is done there will be honest differences of opinion which must be decided by a third party, whose decisions must

be based in law and in right, and in whose integrity and fair-mindedness both have confidence.

And now, if I do not trespass too far upon your time, a few words as to changes in the law and in its administration. I know that you are giving attention to these questions and I disclaim any desire or intent to influence your conclusions or actions. I express a few thoughts along those lines for what they are worth.

The Supreme Court of the United States has decided that the courts have no jurisdiction to review a negative order of the Commission, and some think that this gives the carriers a right that is withheld from the shippers. Personally I see no reason why the law should not give the shippers the same right of appeal that it gives to the carrier. I do not think that such right would be of great benefit to the shippers. The Supreme Court has laid down the limits within which the courts can review the findings of the Commission. The court may inquire whether or not the Commission has proceeded lawfully, whether or not its findings are supported by competent evidence, and whether or not its order invades the constitutional rights of the carrier. If the proceeding has been conducted lawfully, and the findings are supported by evidence, and the order does not invade the carrier's constitutional rights, the court may not set aside the order or substitute its judgment for that of the Commission.

Of course the shipper has just as much right to a lawful proceeding and a finding based upon competent evidence as has the carrier. The constitutional rights of the shipper are not at all the same as those of the carrier. The law does not attempt to regulate the shippers' selling prices.

As has been seen by the annual reports of the Commission, we think that there is a defect in the law in that the periods of limitation within which the carrier may demand the payment of uncollected undercharges are much longer than the period within which the shipper may bring action for recovery of an unreasonable charge. In a few instances this has caused real hardship.

Conditions that are probably different from those that were anticipated have sprung from the most recently enacted amendment to the act to regulate commerce. It has been strongly urged that the amendment was never intended to apply to shipments by express or to the transportation of baggage. We have been unable to discover any clear indication that it attempts to draw any distinction between carriers by rail and express companies. The Supreme Court has held that that portion of the law applied to the transporta-

tion of baggage. Congress knew of that decision and it made no provision in the amendment for excluding baggage from its terms. By the canons of statutory construction, therefore, the law must be held to apply to baggage. If the Congress desires to exempt the transportation of baggage and shipments by express from the operation of this provision, it can, of course, effect that by further amendment.

The question of reparation for damage suffered from the exaction of an unreasonable rate or from an unjust discrimination has been and is one upon which decided differences of opinion are entertained and expressed. The Supreme Court has made it clear that in a discrimination case the damage suffered may be more or less than that measured by the exact extent of the unjust discrimination, and the true measure of the damage suffered must, therefore, be shown by competent proof. There are those who assert that the same rule should be applied in awarding reparation because of the exaction of an unreasonable rate. The Commission has not accepted this view, but has held that the one who bears the unreasonable charge has been damaged to the extent that the charge exceeded that which it has been found would have been reasonable.

A good deal has been said and written about the necessity for a reorganization of the work of the Commission, or the Commission itself. No one realizes more fully than do the members of the Commission the magnitude and the complexity of the duties placed upon the Commission. The system under which our courts are organized and their several jurisdictions defined is often pointed to as a pattern for organizing the work of the Commission. Inasmuch as in ordinary litigation before the courts the parties affected are generally all before the court, while in matters coming before the Commission the whole public is interested and many who are not before the Commission in the case may be affected by the conclusion reached, we may well doubt the wisdom and practicability of dividing the jurisdiction geographically, with the certainty that at times cases involving substantially the same facts and the same principle will be decided differently in different jurisdictions. The Supreme Court pointed out the impossibility of maintaining the underlying principles of the act if the courts in their several jurisdictions were to pass upon questions of an administrative or a quasi-legislative nature.

The Commission has given much thought to this subject and to the various plans that have been suggested for simplifying and expediting the work of the Commission, and reached the con-

clusion that the largest measure of relief and the best results would be secured by enlarging the membership of the Commission, and authorizing it to divide itself into groups or divisions, each division to have and exercise all the powers of the Commission in the matters or cases referred to it. This would give us a mobile but still a centralized body, which could change its divisions and assignments to divisions when and as circumstances might require.

Personally I feel that the valuation work is of such magnitude and importance and of such a technical nature that a commission or a division of the Commission should give undivided attention to the new and intricate problems which will arise in numbers as that work progresses, and especially as the time for fixing upon a valuation approaches.

The Commission can perform the many duties devolving upon it only by thorough organization of its several bureaus and calling to its aid the most competent assistants available. Some features of our administrative work, as for example, the safety appliance features, are so well organized and the principles of those laws are so well defined and established that they give the Commission but a minimum of trouble and demand but little of the time of the Commissioners. Where work or business expands with rapidity it is not always possible to extend an efficient organization as rapidly as might be wished.

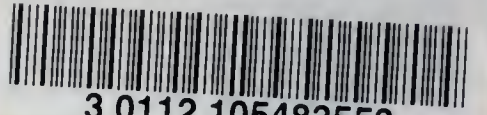
The development of effective and beneficial regulation of the affairs of an industry of such magnitude and vital importance as that of transportation in this country is absorbingly interesting. It inspires one who is actively engaged in the work to bring to it his best thought and efforts. It brings to one a tremendous responsibility, plenty of hard work, and, like all public service, more or less unjust criticism. Bearing responsibility does not wear heavily on the one whose heart is in his work and who has the courage of his convictions. Hard work does not hurt one, and unjust criticism, while unpleasant at times, will never affect the judgment or influence the action of the man whose conscience tells him that he has done the right thing in the light as it is given to him to see.

But, be he ever so able, the commanding general cannot win battles without assistants and soldiers, the manager of a successful industrial concern or railroad must have the loyal co-operation of his forces, the executive or administrative official who succeeds must have the cordial support of others who desire to see and participate in his success. And so, in order that those condi-

tions which all right-minded men would be glad to see in the transportation business may be attained and firmly established, it is necessary that you and many others contribute each his part, no matter how small. As the light grows stronger

and better days dawn for railroads and their patrons as a result of these efforts, everyone who has contributed to the better order of things by some helpful word or action will experience a sense of satisfaction over a good deed done (applause).

UNIVERSITY OF ILLINOIS-URBANA
385 N213P C001 v.2(1915)
Proceedings of meetings.



3 0112 105483553